
(2015) 07 AHC CK 0142

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 37689 of 2015

Raghu Batola

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14
Road Transport Corporations Act, 1950 — Section 12
Uttar Pradesh State Road Transport Corporation Employees (Other Than Officers)
(Appointing Authorities) Act, 1987 — Section 1(2), 2

Citation : (2015) 7 ADJ 348 : (2015) 112 ALR 445 : (2015) 5 AWC 4714

Hon'ble Judges : D.Y. Chandrachud, C.J.; Yashwant Varma, J

Bench : Division Bench

Advocate : Arvind Srivastava and Vikas Mishra, for the Appellant; M.P. Rai,
Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. The petitioner was working as a conductor under the control of the Uttar Pradesh State Road Transport Corporation. A charge-sheet was issued to the petitioner on 22 December 1984 in respect of an alleged act of misconduct. The services of the petitioner were terminated on 23 March 1985. The petitioner challenged the order of termination in a writ petition before this Court. By a judgment and order dated 29 October 1986, a Division Bench of this Court allowed the petition on the ground that the order of termination was passed by an officer who was not the appointing authority and followed an earlier judgment of a Division Bench in Bhopal Singh v. U.P. State Road Transport Corporation and others, Writ Petition No. 8363 of 1986, which has been decided on 10 September 1986. The view taken was that the Regional Manager, Assistant Manager or Station Superintendent was not the appointing authority. The order of termination was quashed but, liberty was granted to the authority competent to proceed in the matter in accordance with law. Following the order of the Division Bench, the petitioner was reinstated by the Regional Manager on 13 February

1987. The State Legislature enacted the Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) (Appointing Authorities) Act, 1987 which came into force with effect from 19 June 1981 by virtue of provisions of Section 1(2). Section 2 made a fresh provision in regard to appointing authorities of employees (other than officers) of the Uttar Pradesh State Road Corporation and was in the following terms:

"2. Appointing authorities.--The appointing authorities of the employees (other than officers) of the Uttar Pradesh State Road Transport Corporation shall be the Board of Directors of the said Corporation or an officer authorised by the said Board to make appointment and will be deemed always to include any officer authorised by the said Corporation under clause (c) of sub-section (1) of Section 12 of the Road Transport Corporation Act, 1950 (Act No. 64 of 1950), as it stood prior to its amendment by the Road Transport Corporation (Amendment) Act, 1982 (Act No. 63 of 1982)."

Section 3 was a validating provision to the following effect:

"3. Validation of certain acts.--Notwithstanding any judgment, decree or order of any Court, Tribunal or other authority or any provisions of the Uttar Pradesh State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981, no orders made, actions or proceedings taken or jurisdiction exercised on or after June 19, 1981 by the officers authorised as appointing authorities by the Uttar Pradesh State Road Transport Corporation under clause (c) of sub-section (1) of Section 12 of the Road Transport Corporation Act, 1950 shall be deemed to be illegal or void or ever to have become illegal or void merely on the ground that such authorised officers were not the appointing authorities."

2. Following the enactment of the Act which received the assent of the Governor, the Regional Manager passed an order on 22 July 1987. The Regional Manager indicated in his order that by virtue of the provisions of the Ordinance which had preceded the enactment of the Act, the order of termination which was passed on 23 March 1987 was restored and that the subsequent order dated 13 February 1987 would cease to have effect. The petitioner filed a writ petition in 1993 (Writ Petition No. 35299 of 1993) since in the meantime, his appeal against the order of termination had been dismissed. The writ petition was disposed of by a learned Single Judge of this Court on 3 December 2014. The submission of the petitioner was that even after the enforcement of the Act, the earlier order of termination could not have been revived in view of the judgment of a Division Bench of this Court. A learned Single Judge of this Court by a judgment dated 3 December 2014 did not accept the contention and rejected the plea with the following observations:

"Moreover, I am of the view that the judgment of this Court by which the earlier punishment order dated. 23.3.1985 was quashed, was passed only on the ground that the officer passing the order was not competent. Once by the

validating Act No. 15 of 1987, the basis of the said judgment was removed then the initial punishment order dated 23.3.1985 stands validated, specially as the validating was given retrospective effect and its validity has been upheld by a Division Bench, this issue has attained finality upto the Supreme Court. In the circumstances, it cannot be said that any vested right had accrued in favour of the petitioner, which could not have been taken away by such an act with retrospective effect. May be, the subsequent order dated 22.7.1987 is not happily worded but this by itself does not take away the effect of a validating Act especially when it has been upheld. Once a similar writ petition of similarly situated persons has been dismissed, it is not available for fresh consideration. The plea regarding this issue is rejected."

3. The learned Single Judge specifically held that since by the Validating Act, the basis of the judgment of the Division Bench was removed, then the initial appointment order would stand validated. The learned Single Judge also noted that the Validating Act has been held to be constitutionally valid by a Division Bench of this Court in *Nagendra Prakash Sharma v. Regional Manager and others*, 1988 UPLBEC 155 . However, in regard to the challenge against the appellate order, the learned Single Judge restored the proceeding back to the appellate authority on the ground that the order was a non speaking order. Following the order of remand, a fresh order was passed by the appellate authority on 27 March 2015 dismissing the appeal.

4. The petitioner has questioned the constitutional validity of the Uttar Pradesh State Road Transport Corporation Employee (Other than Officers) (Appointing Authorities) Act, 1987. The submission which has been urged on behalf of the petitioner is that (i) the judgment of the Division Bench in *Nagendra Prakash Sharma* (supra) which upheld the constitutional validity of the Act did so primarily on the ground of legislative competence which was in issue and hence the petitioner is not precluded from challenging the validity thereof on other grounds; (ii) the Validating Act of 1987 could not have abrogated the effect of the decree between the parties inter se; and (iii) in the circumstances, the order of termination passed against the petitioner on 23 March 1985 which had been quashed and set aside would not have revived.

5. The first issue which falls for consideration is in regard to the ambit of the decision of the Division Bench of this Court in *Nagendra Prakash Sharma* (supra). The constitutional validity of the Act was challenged on various grounds including on the ground that the State Legislature was not competent to enact the law. As a matter of fact, the challenge in *Nagendra Prakash Sharma* was to the Ordinance but it is not in dispute that the provisions of the Ordinance and the Act are identical, the Act having replaced the Ordinance. The Division Bench consisting of Hon''ble Mr. Justice R M Sahai and Hon''ble Mr. Justice A P Misra (as their Lordships then were) upheld the provisions of the Act and rejected the argument that the State Legislature was not competent to enact the law.

6. Having dealt with the issue of legislative competence, the Division Bench also

dealt with the submission that (i) the Act was invalid on the ground that it purported to overrule a decision of this Court; and (ii) that the law suffered from the vice of infringing Article 14.

7. Both these submissions were rejected with the following observations:

"21. The submission that the Ordinance purports to overrule the decision of the Court is also without substance as it is firmly established that a legislature can remove the defects in the Act or rule from retrospective effect. It is not legislative overruling but removal of defects thereby rendering the law failed, Tirath Ram Rajindra Nath, Lucknow Vs. State of U.P. and Another, AIR 1973 SC 405 : (1973) 3 SCC 585 : (1973) 31 STC 314 ; Hindustan Gum and Chemicals Ltd. Vs. State of Haryana and Others, AIR 1985 SC 1683 : (1985) 2 SCALE 361 : (1985) 4 SCC 124 : (1985) 2 SCR 630 Supp ."

22. Similarly the argument that Ordinance suffers from vice of Article 14 appears to be without any merit. Validation of provision with retrospective effect or enactment of a law or remove defects in existing law from back date cannot be prima facie held to be discriminatory. Argument that Ordinance defines appointing authority from June, 1981 and validates action taken by such authority under the resolution of 1974 whereas fresh delegation has been given in 1986, and, therefore, the action is arbitrary is misconceived. Appointing Authority under the ordinance and even under the fresh exercise of powers being the same no plea of discrimination can be raised. Delegation in 1986 was restored to because of the decisions given by this Court. Earlier resolution passed in 1974 had been superseded. Till then Ordinance had not been issued. In any case the delegation of power under regulation framed in 1981 does not in any manner contravene the provisions of the Ordinance."

8. As a matter of fact, the Division Bench in Nagendra Prakash Sharma's case set out the facts of the case in which a conductor who had been charge-sheeted was removed and the order of removal had been quashed by this Court. The Division Bench held that by virtue of the Ordinance, the defect pointed out by this Court in regard to the order being passed by an authority which was not competent to do so had been removed. Since the defect had been removed, it was held that the Regional Manager did not commit any error of law in terminating the services of the petitioner subsequent to the Ordinance.

9. In view of the judgment of the Division Bench in Nagendra Prakash Sharma's case, the area of constitutional validity is not open to be re-agitated before this Court since the judgment would bind the Court.

10. The learned counsel appearing on behalf of the petitioner has relied upon a decision of the Supreme Court in S.T. Sadiq Vs. State of Kerala and Others(2015) 3 AD 387 : AIR 2015 SC 1306 : (2015) 2 SCALE 69 : (2015) 4 SCC 400 : (2015) 3 SCJ 23 , recently delivered on 4 February 2015.

11. The principle of law which has been laid down by the Supreme Court

consistently is that it is open to a Legislature -Parliament as well as the State Legislature to enact a law with prospective or retrospective effect. A legislature with legislative competence has the authority under our Constitution to legislate both prospectively and retrospectively. The power to enact a law with retrospective effect is subject only to the provisions of the Constitution and a law enforced with retrospective effect has to meet the requirement of Article 14. The second important principle which must be emphasized is that it is open to the legislature to validate a statutory provision by removing the basis of a judicial decision which declared it earlier to be invalid. The legislature cannot directly nullify a judgment or decree of the Court but it is open to it to remove the defect which has been pointed out in the judgment of the Court. Once the basis of the judgment is taken away, the law would constitute a valid piece of validating legislation. This principle has been followed in the judgment of the Supreme Court in S.T. Sadiq's case noted above. The judgment refers to the earlier body of precedent on the subject and which need not be set out once again in the course of the present decision.

12. Consequently, the State legislature in the present case was competent to overcome the defect that was pointed out in the judgment of the Division Bench. Section 2 of the Validating Act designated who would be the appointing authority. Section 3 was a validating provision as a result of which once the defect was removed, orders of termination were validated notwithstanding any judgment or decree to the contrary. This was permissible to the legislature and in fact has been upheld in the judgment of the Division Bench in Nagendra Prakash Sharma (supra). We may also note here that the learned Single Judge of this Court while considering the earlier writ petition filed by the petitioner also dealt with the submission that a vested right which accrued to the petitioner was taken away and has negated that submission in the judgment and order dated 3 December 2014 which is not in challenge before us.

13. For these reasons, we find no merit in the challenge to the constitutional validity of the provisions of the Act.

14. Having said this, we are conscious of the fact that the writ petition filed by the petitioner to challenge the order of termination dated 23 March 1985 was allowed by the Division Bench only on the ground that the order of termination was passed by an authority not competent to pass the order. The petitioner was not heard on the merits of the challenge to the order of termination. After the order of termination stood restored as a result of the Validating Act, the petitioner filed an appeal. Against the appellate order, a writ petition was filed in 1993 which was disposed of in 2014 by setting aside the order of the appellate authority and restoring the appeal. The appellate authority has now passed an order on 27 March 2015. The petitioner would be at liberty to question the legality of the termination on merits, save and except in regard to the issue of constitutional validity.

15. On the request of the learned counsel appearing on behalf of the petitioner,

we deem it fit, fair and proper to dispose of this petition by granting liberty to the petitioner to file a petition afresh to question the order of the appellate authority on merits, in terms of the present judgment and order.

16. For the reasons which we have indicated, we have found no substance in the constitutional challenge.

17. The petition is, accordingly, disposed of. There shall be no order as to costs.