

(1988) 03 KAR CK 0055
In the Karnataka High Court
Case No : Writ Appeal No. 421/83

S. Visweswariah

APPELLANT

Vs

New India Assurance Co. Ltd. and Another

RESPONDENT

Date of Decision : 28-03-1988

Acts Referred:

General Insurance Business (Nationalisation) Act, 1972 — Section 17, 5, 6

Citation : (1989) 58 FLR 568 : (1988) 2 LLJ 233

Hon'ble Judges : Prem Chand Jain, C.J.;K. Shivashankar Bhat, J

Bench : Division Bench

Judgement

Prem Chand Jain, C.J.—S. Visweswariah has filed this appeal u/s 4 of the Karnataka High Court Act against the judgment of a learned single Judge of this Court dated 19th January 1983 by which Writ Petition No. 10062/76 filed by him has been dismissed.

2. The Vanguard Insurance Company Limited with its registered office at Madras was engaged in the business of doing general insurance. The Company has a branch office at Bangalore and the appellant was working as its Manager. On 13th May 1971, the President of India in exercise of the powers conferred by Art. 123(1) of the Constitution, promulgated the General Insurance (Emergency Provisions) Ordinance, 1971, (No. 6 of 1971), (hereinafter referred to as "the Ordinance"), pending complete nationalisation of general insurance in the country, inter-alia providing for transfer of the management of the undertakings of general insurance to the Central Government. Consequently from 13th May 1971 the business of the Vanguard Insurance Co., Ltd. (hereinafter referred to as "the Company") stood vested in the Central Government. The Ordinance was replaced and re-enacted by the Parliament as the General Insurance (Emergency Provisions) Act, 1971, (Central Act 17 of 1971), (hereinafter referred to as "the Act"). The Act has been given retrospective effect from 13th May 1971, the day on which the Ordinance was promulgated. The process of nationalization of the General Insurance was completed by enacting the General Insurance Business

(Nationalisation) Act, 1972, (Central Act 57 of 1972), (hereinafter referred to as "1972 Act"), by which Act and the scheme framed thereunder by the Central Government, the Company was merged in the New India Assurance Company Limited.

When the Company was functioning in the private sector, disciplinary proceedings were initiated by the Secretary against the appellant by issuing a show cause notice dated 25th February 1971. This show cause notice did not culminate into any final order and in the meantime the Company's business stood vested in the Central Government. It appears that after vesting of the Company's business, the Custodian of the Company, by his order dated 28th August 1972 (Exhibit-A), placed the appellant under suspension and initiated disciplinary proceedings against him into the alleged misconduct referred to therein in the course of his duties as Branch Manager. By a separate order, the Custodian appointed one Sri. G. Venkataraman, an Advocate of the Madras Bar, to inquire into the alleged misconduct. Thereafter on 29th November 1972 and 1st December 1972 the Custodian served two more charge-memos against the appellant and the Inquiry Officer was requested to inquire into those charges also.

The substance of the charges levelled against the appellant is that he had misappropriated various amounts and that he had misbehaved and assaulted an officer of the Company called Mohan Krishnan Naidu who was directed to hold a preliminary enquiry.

After a series of adjournments, the Enquiry Officer posted the enquiry to 17th August 1973 at Bangalore at 10.30 A.M. But at the appointed time the appellant and his counsel were absent and therefore the Enquiry Officer proceeded with the enquiry, completed the same and submitted his report on 27th September 1973 to the Company recording a finding that the appellant was guilty of the charges levelled against him.

On consideration of the said report of the Enquiry Officer, the Chairman-cum-Managing Director of the New India Assurance Col., Ltd., Bombay, vide order dated 8th October 1975 (Exhibit-Z), concurring with the report of the Enquiry Officer, passed an order of dismissal against the appellant from service with effect from 28th August 1972 with a direction that he should make good a sum of Rs. 23,831-95 that was found due from him.

Feeling aggrieved from the said order, the appellant preferred an appeal which was rejected by the Appellate Authority vide order dated 21st April 1976 (Exhibit Z4). Still dissatisfied, the appellant filed Write Petition No. 10062/76 calling in question the legality and propriety of the order of dismissal and the order passed by the Appellate Authority.

3. The writ petition was contested on behalf of the respondents and the averments made in the petition were stoutly controverted. Before the learned single Judge, the following points were urged :-

(i) That the enquiry initiated by the Custodian of the Company was without jurisdiction as the Secretary alone was authorised by Clause-16 of the Standing Orders to initiate the enquiry;

(ii) That the Enquiry Officer illegally refused to adjourn the enquiry proceedings on 17th August 1973 as a result of which the case of the appellant has been adversely affected; and

(iii) That the retrospective dismissal was illegal.

On consideration of the respective contentions of the learned counsel for the parties, the learned single Judge has recorded the following findings :-

(i) From the pleadings and the documents placed before the Court it is satisfactorily proved that Sri. Ramachar and Sri. Swaminathan had been legally appointed as Custodians and they had legally acted as Custodians of the undertaking. With the disappearance of the previous functionaries specified in the Standing Orders and a new functionary taking the place of the earlier functionaries, it would be proper to hold that it is only the new functionary that can exercise the powers of the previous functionaries. Such a construction which flows from the rules of construction incorporated in the General Clauses Act also achieves the scheme and object of the Act. Consequently the Custodian alone was competent to initiate the proceedings.

(ii) Whether an adjournment should be granted or not, that too after the inquiry had actually commenced, was essentially a matter for the Enquiry Officer to decide. On an examination of the circumstances placed before him, the Enquiry Officer who had come down from Madras refused to adjourn the case and completed the enquiry. In refusing the adjournment and completing the enquiry it is not possible to hold that the Enquiry Officer has violated the principles of natural justice and has acted illegally.

(iii) The order of dismissal shall be treated as effective only from the date it is made, provided it is otherwise valid.

In view of the aforesaid findings, the writ petition was dismissed. Hence the present appeal.

4. Before us, Mr. H. Subrahmanya Jois, learned counsel for the appellant, has raised the same points which were urged before the learned single Judge, and on giving our thoughtful consideration to the entire matter in the light of the statutory provisions, we find no merit in any of the contentions of the learned counsel for the appellant.

5. So far as the first point is concerned viz., that the proceedings could not be initiated by the Custodian, reference may be made to Section 17 of the 1971 Act and Secs. 5, 6, and 7 of the 1972 Act which are in the following terms :-

Section 17 of the 1971 Act :

"17. REPEAL AND SAVINGS : (1) The General Insurance (Emergency Provisions) Ordinance, 1971 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken (including any direction given and orders and rules made) under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act."

Sections of the 1972 Act :

"5. TRANSFER OF UNDERTAKINGS OF OTHER EXISTING INSURERS :

(1) On the appointed day, the undertaking of every existing insurer who is not an Indian Insurance Company shall stand transferred to and vested in the Central Government and the Central Government shall immediately thereafter provide, by notification, for the transfer to and vesting in such Indian Insurance Company, as it may specify in the notification, of that undertaking.

xxx xxx xxx 6. EFFECT OF TRANSFER OF UNDERTAKINGS :

xxx xxx xxx (3), If on the appointment day, any suit, appeal or other proceeding of whatever nature in relation to any business of the undertaking which has been transferred u/s 5 is pending by or against any such existing insurer as is referred to in that section, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of the undertaking or of anything contained in this Act, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Indian Insurance Company in which the undertaking or the part to which the proceeding relates has vested.

xxx xxx xxx 7. TRANSFER OF SERVICE OF EXISTING EMPLOYEES IN CERTAIN CASES :

(1) Every whole-time officer or other employee of an existing insurer other than an Indian Insurance Company who was employed by that insurer wholly or mainly in connection with his general insurance business immediately before the appointed day shall, on the appointed day, become an officer or other employee, as the case may be, of the Indian Insurance Company in which the undertaking of that insurer or that part of the undertaking to which the service of the officer or other employee relates has vested, and shall hold his office or service under the Indian insurance company on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if there had been no such vesting, and shall continue to do so unless and until his employment in the Indian insurance company in which the undertaking or part has vested is terminated or until his remuneration, terms and conditions are duly altered by that Indian insurance company :

Provided that nothing in this sub-section shall apply to any such officer or other employee who has given, in writing, notice to the Central Government or to any person nominated in this behalf by that Government before the appointed day

intimating his intention of not becoming an officer or employee of the Indian insurance company in whom the undertaking or part thereof to which his service relates has vested."

From a bare reading of the aforesaid provisions, it is quite evident that the proceedings which were initiated by the functionary before nationalisation could be continued by the functionary after nationalisation and such proceedings did not abate. Even on first principle, the argument seems to be untenable as it is not legally possible to hold that a person against whom such disciplinary proceedings had been initiated has to go scot-free as a result of the new enactment and the proceedings which were initiated by the Secretary validly would abate. Nationalisation of the insurance company cannot result in the dropping of the disciplinary proceedings in which serious charges of misappropriation and misconduct are involved. In view of the aforesaid provisions and the reasoning adopted by the learned single Judge, we find no merit in the contention of the learned counsel for the appellant. The learned single Judge has recorded a finding that Sri. Ramachar and Sri. Swaminathan have validly been appointed as Custodians, and Mr. Jois has not been able to point out any infirmity in that finding.

6. Coming to the second point whether proper opportunity was afforded to the appellant during the enquiry proceedings, from the facts as they emerge from the pleadings and the record we find that the appellant was afforded full opportunity to co-operate in the enquiry; but for the reasons best known to him he did not avail of it. For not appearing before the Enquiry Officer on 17th August 1973 there was no valid reason for his absence, and it has been so found by the Enquiry Officer. This Court in exercise of its power under Art. 226 of the Constitution would have to jurisdiction to interfere with such a finding, especially when we do not find any material on the record to hold that the appellant was not afforded an opportunity of contesting the charges. In this view of the matter, we concur with the view taken by the learned single Judge on this aspect of the matter.

7. This brings us to the question of quantum of punishment. In the circumstances of the case, we find that the only punishment that could be awarded on the charges proved during the enquiry, would be dismissal, and the disciplinary authority has, taking into consideration all the circumstances, rightly passed such an order. Again no case for interference has been made out on the question of quantum of punishment.

8. No other point arises for consideration.

9. Before parting with the order, it may be observed that the learned Advocate General fairly states at the Bar that the amount of appellant's contributions to the Provident Fund with up to date interest which is lying with the Company shall be paid to him within one month from today through cheque.

10. For the reasons recorded above, this appeal fails and is dismissed but

without any order as to cost`