(1994) 11 PAT CK 0025

In the Patna High Court

Case No : L.P.A. No. 117/87

State Bank of India APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 10-11-1994

Acts Referred:

Citation : (1994) 11 PAT CK 0025

Final Decision : Allowed

Judgement

A. K. Ganguly, J.—This Letters Patent Appeal was filed against the judgment dated October 23, 1987 passed by a learned Single Judge in CWJC No. 5433 of 1986.

2. The main point of controversy in the impugned judgment is about the effect of the notification dated August 13, 1985 issued in exercise of power u/s 4(2) of the Bihar Shops and Establishments Act, 1953 (hereinafter referred to as the said Act) on the proceeding pending before the Presiding Officer, Labour Court, Muzaffarpur who is an authority under the said Act.

3. In order to understand the nature of controversy between the parties, it is necessary to note only a few facts.

4. The respondent No. 3 in this appeal joined the services of the State Bank of India (hereinafter referred to as the said Bank) at Balasore sometime in February, 1986. Thereafter on transfer he had come to Muzaffarpur. While respondent No. 3 was working as the then Agent of Muzaffarpur Branch, the management of the said Bank asked respondent No. 3 to explain his conduct relating to detention of some cheques for an unduly long period. As the explanation of respondent No. 3 was not found satisfactory, he was placed under suspension and thereafter charge sheeted. A departmental enquiry followed in which an order of dismissal was passed against him. The appeal against the said order of dismissal was also dismissed. Thereafter respondent No. 3 filed a complaint u/s 26(2) of the said Act on or about June 26, 1978 along with a

petition for condonation of delay. The said complaint was entertained by the Presiding Officer, Labour Court, Muzaffarpur, an authority under the said Act, and by an order dated October 31, 1986 the said Authority was pleased to hold that the said complaint is maintainable and is not barred by limitation. As such the said Authority passed an order reinstating the respondent No. 3 in the particular post from which he was dismissed and further directed the said Bank to make payment of back wages and benefits including yearly increment which would have been admissible to him, if he would not have been dismissed from service.

5. It is common ground before us that before the said Authority a point was raised about the jurisdiction of the said Authority to pronounce upon the said complaint in view of the notification dated August 13, 1985 whereby the branches of all Public Sector Banks situated in the State of Bihar including the said Bank were exempted from the purview of the said Act. The said notification having been issued on August 13, 1985, the contention of the appellant Bank is that the said Authority ceases to have any jurisdiction to pass the order on October 31, 1986. However, the Authority negatived the said contention and passed the said order of reinstatement of respondent No. 3 in this appeal. Hence the appellant Bank filed a writ petition before this Court challenging, inter alia, the order of the Authority under the said Act, The said writ petition was heard by a learned single Judge and by the impugned judgment dated October 23, 1987 the writ petition was dismissed. In dismissing the writ petition, the learned single Judge, held, inter alia, that the notification in question is not retrospective in character and as such despite the said amendment the Authority retained its jurisdiction to adjudicate the complaint u/s 26 of the said Act. The learned single Judge was also pleased to hold that the Authority had power to condone the delay u/s 26(4) of the said Act and in doing so discretion has been exercised on correct principles by the said Authority and the same cannot be interfered with in writ jurisdiction.

6. In this appeal before us, the principal question which emerges is whether or not the Authority retains its jurisdiction in view of the amendment in law and the consequential notification in question.

7. In the course of hearing this appeal, we made it clear to the learned counsel for the appellant that in the event we find that the Authority has jurisdiction to adjudicate the complaint despite (he aforesaid amendment, in that case the exercise of jurisdiction by the Authority in condoning the delay cannot be said to have been vitiated by any illegality. Therefore, we wanted the learned counsel for the parties to address us on the first question, namely, whether or not the Authority retained its jurisdiction despite the aforesaid amendment and consequently the argument proceeded on that line.

8. As we have held ultimately that Authority under the said Act does not retain any jurisdiction in view of the said amendment, we have not decided the question relating to condonation of delay by the said authority in entertaining the complaint in question.

9. In order to appreciate the controversy centering round the first question, it may be necessary to set out below .the relevant statutory amendment. The amended provision of Section 4(2) of the said Act is as follows;-

"4(2) Notwithstanding anything contained in this Act, the provisions thereof specified in the third column of the Schedule shall not apply to the establishment, employees and other persons referred to in the corresponding entry in the second column.

Provided that the State Government may, by notification, add to omit or alter any of the entries in the Schedule in respect of one or more areas of the State and on the publication of such notification, the entries in either column of the Schedule shall be deemed to be amended accordingly"

10. The obvious purpose behind the said amendment is to grant a statutory exemption in respect of certain establishments, namely, branches of Public Sector Banks situated in the State of Bihar. The upshot of the said statutory amendment is that the State Government is statutorily enabled to issue notification to add, omit or alter any of the entries in the Schedule in respect of one or more areas of the State and on the publication of such notification, the entries in the column of the Schedule shall be deemed to be amended accordingly,

11. In exercise of the powers conferred by The said statutory amendment, the State of Bihar had issued a notification amending the Schedule appended to the said Act. The said notification is setout below:-

"S.O. In exercise of the powers conferred by the proviso to Sub-section (2) of Section 4 of the Bihar Shops and establishments Act, 1953 (Bihar Act VIII of 1954) the Governor of Bihar is pleased to make the following amendment in the Schedule appended to the said Act,

AMENDMENT

In the said Schedule -

1. Serial No. 35 and its entries shall be deleted.

2. For serial No. 33 and its entries, the following shall be substituted, namely.

33. All branches of the Public Sector Banks situated in the State of Bihar."

AH provisions

No. 10/86-1019/85L&E

By Order of the Governor of Bihar

Sd/- Akhila Nand Lall

Under Secretary to Government."

12. It is an admitted position that as a result of the said notification all the Branches of the said Bank situated within the State of Bihar go out of the purview of the said Act.

13. Now the dispute is only confined to the question whether such notification under the amended Section 4(2) of the said Act will affect the proceedings which are pending on the date of the notification and the one with which we are concerned was a proceeding pending on the date of the notification.

14. The learned single Judge has unfortunately paid attention to the question whether or not such notification is retrospective or prospective or whether the executive authority has power to pass such notification.

15. We, however, think that unfortunately that is an error committed by the learned single Judge.

16. We think that even in view of the non-obstante clause and the deeming provision in the amended provision, it will come into operation immediately and affect proceedings which are pending on the date of the notification.

17. A proper and reasonable construction of the amended provision shows that from the date of publication of the notification the entries in either column of the Schedule shall be deemed to be amended accordingly. It is clear that with the help of the deeming provision, the legislature has intended that the notification will be made effective immediately on its publication. It is also to be kept in mind that the said amended provision starts with a non obstante clause. Therefore, the question in this case is not whether the notification issued under the amended provision will be retrospective or prospective but the relevant query is whether the said notification will affect the pending proceeding. In the instant case the adjudication of the complaint in question was admittedly pending before the said Authority on the date of publication of the said notification. Therefore, the legal consequence of the notification in view of the deeming provision is that the said Schedule stands amended immediately on the publication of the notification in question. As a result of such immediate amendment, the said Act including all its provisions ceases to apply to the establishment, employees and other persons referred to in the entry in the second column of the Schedule. Therefore, if the Act is not applicable to the employees, establishment and other persons referred to in the corresponding entries of the second column, the said Authority also losses its jurisdiction to adjudicate the said complaint which obviously relates to the employees and establishment of the said Bank which is a public sector bank situated in the State of Bihar and included in the second column of the Schedule.

18. On the interpretation of the legal fiction, the Court has to primarily consider here two aspects, firstly the purpose of introducing a legal fiction and secondly the logical consequences of such a legal fiction.

19. Here the obvious purpose of the amended Section 4(2) of the said Act is to

grant exemption to certain establishment from the operation of the said Act and the said purpose is highlighted by the use of non obstante clause.

20. In order to effectuate the said purpose, the State Government has been empowered to issue the notification and the effect of such notification is on the strength of the deeming provision, an immediate amendment of the Schedule to the said Act.

21. Therefore, the purpose of introducing the deeming provision is to give immediate effect to the notification which grants exemption to certain establishment from the application of the said Act.

22. Now about the logical consequences of a deeming provision we can do no better than quote the oft-quoted dictum of Lord Asquith in the case of East End Dwellings Co, Limited v. Finsbury Borough Council, reported in (1951) 2 A11 England. Report 587. Those inimitable words of Lord Asquith are:

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied" it. The Statute says that you must imagine a certain state of affairs, it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of the state of affairs."

23. The said observation has been repeatedly followed by the apex Court in various decisions and recently also in the decision in the case of M. Venugopal v. The Divisional Manager reported in (1994-I-LLJ-597)(SC) at paragraph 11....

24. Here the inevitable corollaries of that state of affairs'' is the immediate amendment of the Schedule on the date of the notification. Therefore, all pending proceedings on that date, like the present one will be affected by such amendment of the Schedule.

25. Almost in a similar situation, the Supreme Court in its judgment in the case of Lakshmi Narayan Guin and Others Vs. Niranjan Modak, have come to a similar conclusion. In the said decision, the Supreme Court was considering the effect of a change of law on the pending proceeding. In the said decision it has been held that during the pendency of the proceeding the change of law has to be taken into account and such change will accordingly govern the rights of the parties. The law in this connection has been, on a consideration of various other judgments, succinctly laid down by the Supreme Court in paragraph 9 of the judgment. Relevant excerpts from that paragraph are set out below (at page 113):-

That a change in the law during the pendency of an appeal has to be taken into account and will govern the rights of the parties was laid down by this Court in Ram Sarup Vs. Munshi and Others, , which was followed by this Court in Mula and Others Vs. Godhu and Others, . We may point out that in Smt. Dayawati and

Another Vs. Inderjit and Others, this Court observed :-

"If the new law speaks in language, which expressly or by clear intendment, takes in even pending matters the Court of trial as well as the Court of appeal must have regard to an intention so expressed, and the Court of appeal may give effect to such a law even after the judgment of the Court of first instance."

26. In view of the aforesaid legal position, we are of the view that the Authority in view of the changed position in law by virtue of the amended provision of Section 4(2) of the said Act read with the notification ceases to have jurisdiction to pronounce the said order on October 31, 1986 because the said notification on the strength of the amended provision of the said Act came into existence admittedly on August 13, 1985.

27. We, therefore, allow the appeal and set aside the judgment of the learned Single Judge and allow the writ petition and thereby set aside the order dated October 31, 1986 passed by the Authority under the said Act. However, we make it clear that during the pendency of the appeal some payments have been made by the said Bank to respondent No. 3 under the orders of the court. As a result of this judgment the appellant Bank would not be entitled to refund or initiate any proceeding for recovery of the said amount paid to respondent No. 3 under previous order of this Court. There will be no order as to costs.

K. Venkataswami, C. J.

I agree.

