
(2014) 07 SC CK 0096
In the Supreme Court Of India
Case No : Orgnl. Suit No. 6 of 2004

State of Madhya Pradesh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Constitution of India, 1950 — Article 131, 139A, 14, 262, 32
Madhya Pradesh Reorganisation Act, 2000 — Section 58(4)

Citation : 2014 (8) SCALE 553

Hon'ble Judges : Ranjan Gogoi, J;M. Yusuf Eqbal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The State of Madhya Pradesh had instituted the present proceeding i.e. Original Suit No. 6 of 2004 seeking following reliefs: (a) Call for the records relating to the impugned Notifications/Orders dated 2.11.2004 and 4.11.2004 and declare the same as null and void as the same is unconstitutional and in violation of Article 14 of the Constitution;

(b) Direct 1st Defendant to dissolve MPEB in consonance with other orders/directions dated 12.4.2001, 4.12.2001 and 23.5.2003 passed by the 1st Defendant u/s 58(4) of MPRA;

(c) Direct the 1st Defendant by way of mandatory injunction to perform its constitutional and the statutory duty to lay down proper criteria for apportionment of assets, rights and liabilities in accordance with law and to ensure equitable, just, fair and reasonable apportionment of assets, rights and liabilities amongst the successor Boards on the basis of revenue potential so as to avoid undue hardship and disadvantage to any of the successor Boards; and

(d) Pass any other order and/or direction, as this Court may deem fit and proper in the facts and circumstances of the case.

A preliminary objection to the maintainability of the suit was raised on behalf of

the 2nd Defendant - State of Chhattisgarh on the ground that the same would not be maintainable in view of the decision rendered by this Court in a Writ Petition filed by the Madhya Pradesh State Electricity Board being Writ Petition (Civil) No. 675 of 2004 M.P. State Electricity Board Vs. Union of India (UOI) and Others, raising the same issues as in the present suit. The said issues have been negative by this Court by the aforesaid judgment.

2. As the said question i.e. of maintainability of an Original Suit in view of the earlier decision in a writ proceeding was pending before the Constitution Bench in Original Suit No. 3 of 2006 (State of Tamil Nadu v. State of Kerala and Anr.), the proceedings in this case were deferred by Order dated 12th February, 2013, to await the judgment of the Constitution Bench. The Constitution Bench judgment has been now pronounced on 7th May, 2014, which is reported in C.R. Neelakandan and Another Vs. Union of India (UOI) and Others,

3. Before we proceed to consider the preliminary objection raised on behalf of the 2nd Defendant and the arguments advanced in this regard by the learned Counsel for the parties, it will be necessary to notice the prayers made in Writ Petition (Civil) No. 675 of 2004 filed by the M.P. State Electricity Board. The same have been set out in the reported decision in M.P. State Electricity Board (supra), which is to the following effect:

"(a) call for records of the proceedings of the Central Government relating to the notifications/orders dated 12-4-2001, 26-12-2001, 23-5-2003, 2-11-2004 and 4-11-2004 passed by the Ministry of Power, Government of India;

(b) quash the impugned notifications/orders dated 2-11-2004 and 4-11-2004 being unconstitutional and in violation of Article 14 of the Constitution.

(c) direct Respondent 1 to dissolve MPEB in consonance with the orders/directions dated 12-4-2001, 4-12-2001 and 23-5-2003 passed by the Government of India u/s 58(4) of the Madhya Pradesh Reorganisation Act;

(d) direct Respondent I to perform its constitutional and statutory duty to lay down proper criterion for apportionment of assets, rights and liabilities in accordance with law and to ensure equitable, just, fair and reasonable apportionment of assets, rights and liabilities amongst the successor Boards on the basis of revenue potential so as to avoid undue hardship and disadvantage to any of the successor Boards; and

(e) pass any other order and/or direction, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

4. Not only the prayers are similar even the wordings of the same appear to be identical.

5. The Constitution Bench in the case of State of Tamil Nadu v. State of Kerala and Anr. (supra) has clearly held that the findings recorded and the conclusions reached in a proceeding under Article 32 of the Constitution of India would

effectively operate as res judicata in a subsequent proceeding initiated on the same cause of action even though the subsequent proceeding may be under Article 131 of the Constitution of India. The position is made amply clear by the views expressed by the Constitution Bench in Para 155, 163, 164, 165, 166, 169 and 170 of judgment reported in C.R. Neelakandan and Another Vs. Union of India (UOI) and Others, which may be conveniently extracted below: "155. It is true that 2006 judgment was rendered in exercise of the jurisdiction of this Court under Article 32 of the Constitution and the petitions which were transferred to this Court under Article 139A but to say that such judgment does not bind this Court while deciding the present suit, which confers exclusive jurisdiction upon it, is not correct. The earlier decision of this Court by no stretch of imagination can be regarded as a judgment rendered without jurisdiction. A finding recorded by this Court in the proceedings under Article 32 is as effective and final as in any other proceedings.

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163. For the applicability of rule of res judicata, the important thing that must be seen is that the matter was directly and substantially in issue in the previous proceeding and a decision has been given by the Court on that issue. A decision on issue of fact in the previous proceeding - such proceeding may not be in the nature of suit - constitutes res judicata in the subsequent suit.

164. In light of the above legal position, if the 2006 judgment is seen, it becomes apparent that after considering the contentions of the parties and examining the reports of Expert Committee, this Court posed the issue for determination about the safety of the dam to increase the water level to 142 ft. and came to a categorical finding that the dam was safe for raising the water level to 142 ft. and, accordingly, in the concluding paragraph the Court disposed of the writ petition and the connected matters by permitting the water level of Mullaperiyar dam being raised to 142 ft. and also permitted further strengthening of the dam as per the report of the Expert Committee appointed by the CWC. The review petition filed against the said decision was dismissed by this Court on 27.7.2006. The 2006 judgment having become final and binding, the issues decided in the said proceedings definitely operate as res judicata in the suit filed under Article 131 of the Constitution.

165. Shri Harish Salve, learned senior counsel for Kerala, placed reliance upon the decision of this Court in N.D. Jayal and Another Vs. Union of India (UOI) and Others, In N.D. Jayal Dharmadhikari, J. made general observations on the dam safety aspect that plea like res judicata on the earlier decisions passed by the Supreme Court cannot be allowed to be raised. The observations made by Dharmadhikari, J. in N.D. Jayal⁶⁹ have to be read as an exception to the res judicata rule in the matters where, by their very nature, the factual situation has drastically changed in course of time. If substantial changes in the circumstances occur and such circumstances are shown to the Court necessitating departure from the earlier finding on the issue of safety, the Court can be approached and

in that event the Court itself may exercise its discretion to reopen the safety aspect having regard to the drastic change in circumstances or in emergent situation as to the safety of dam. In our view, a judicial decision, having achieved finality, becomes the last word and can be reopened in the changed circumstances by that Court alone and no one else.

166. On behalf of Kerala, it is contended that the jurisdiction of this Court under Article 32 of the Constitution for enforcement of the fundamental rights conferred by Part III of the Constitution is ousted or excluded in respect of disputes between two or more States: since such disputes fall within the ambit of the original jurisdiction of this Court under Article 131 of the Constitution or jurisdiction of a tribunal constituted under the provisions of Inter-State River Water Disputes Act, 1956 read with the provisions of Article 262 of the Constitution. Thus, it was submitted that the 2006 judgment is not binding and that the rule of *res judicata* can hardly be attracted in this situation.

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169. Explanations VII and VIII were inserted in the above provision by CPC (Amendment) Act, 1976 w.e.f. 1.2.1977. Explanation VIII in this regard is quite relevant. The principles of *res judicata*, thus, have been made applicable to cases which are tried by Courts of limited jurisdiction. The decisions of the Courts of limited jurisdiction, insofar as such decisions are within the competence of the Courts of limited jurisdiction, operate as *res judicata* in a subsequent suit, although, the Court of limited jurisdiction that decided the previous suit may not be competent to try such subsequent suit or the suit in which such question is subsequently raised. If a decision of the Court of limited jurisdiction, which was within its competence, operates as *res judicata* in a subsequent suit even when the subsequent suit is not triable by it, a fortiori, the decision of the highest Court of the land in whatever jurisdiction given on an issue which was directly raised, considered and decided must operate as *res judicata* in the subsequent suit triable exclusively by the highest Court under Article 131 of the Constitution. Any other view in this regard will be inconsistent with the high public policy and rule of law. The judgment of this Court directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question before this Court, though, label of jurisdiction is different.

170. The principles of *res judicata* are clearly attracted in the present case. The claim of Kerala in the earlier proceeding that water level cannot be raised from its present level of 136 ft. was expressly not accepted and the obstruction by Kerala to the water level in the Mullaperiyar dam being raised to 142 ft. on the ground of safety was found untenable. The judgment dated 27.2.2006 of this Court, thus, operates as *res judicata* in respect of the issue of safety of the dam by increasing its water level from 136 ft. to 142 ft."

In the light of the decision of the Constitution Bench, there can be no manner of doubt that the decision rendered by this Court in Writ Petition (Civil) No. 675 of

2004 filed by the M.P. State Electricity Board under Article 32, M.P. State Electricity Board Vs. Union of India (UOI) and Others, would operate as res judicata and bar the proceedings in the present Original Suit filed under Article 131 of the Constitution of India. We, therefore, have no hesitation in holding that the Original Suit filed by-the State of Madhya Pradesh is not maintainable. We, accordingly, dismiss the same without, however, any order as to cost.