

(1957) 01 MAD CK 0017
In the Madras High Court

Trichinopoly City Co-operative Bank Ltd.	APPELLANT
Vs	
Additional Commissioner for Workmen's Compensation and Another	RESPONDENT

Date of Decision : 17-01-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1957) 1 LLJ 642

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—This is an application under Article 226 of the Constitution for the issue of a writ of certiorari to set aside the order of the Additional Commissioner for Workmen's Compensation, dated 11 January 1956, passed under the provisions of Section 41 of the Madras Shops and Establishments Act, Act XXXVI of 1947.

2. The second respondent was a clerk in the employ of the petitioner bank from about 1942. He was discharged from the service of the bank on 14 May 1955. The second respondent preferred an appeal u/s 41 of the Act XXXVI of 1947 (hereinafter referred to as the Act) to the prescribed authority, the Commissioner for Workmen's Compensation, and that appeal was disposed of by the Additional Commissioner.

3. During the proceedings before the Additional Commissioner the petitioner advanced a preliminary objection, that the provisions of the Act including Section 41 did not apply to the employee, the second respondent. That contention was overruled by the Additional Commissioner on 31 October 1955 and again on 11 January 1956. By his order dated 11 January 1956 the Additional Commissioner set aside the order of the petitioner dated 14 May 1955, which meant that the petitioner had to reinstate the second respondent.

4. To understand the scope of the petitioner's contention, that the provisions of

the Act did not apply to the second respondent, and that therefore the Additional Commissioner had no jurisdiction to hear and dispose of the appeal preferred u/s 41 of the Act, it may be necessary to set out a few more facts. The petitioner is a co-operative society registered under the provisions of the Madras Co-operative Societies Act (Act VI of 1932). Section 6 of the Madras Shops and Establishments Act runs:

The State Government may by notification exempt either permanently or for a specified period any establishment or other class of establishments or person or class of persons from all or any of the provisions of this Act subject to such conditions as the State Government deem fit.

The notification issued to the Government on 29 August 1953 ran:

In exercise of the powers conferred by Section 6 of the Madras Shops and Establishments Act, 1947 (Act XXXVI of 1947), the Governor of Madras hereby exempts for a period of one year from the date of publication of this notification all societies registered u/s 4 of the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), from the provisions of the Act first mentioned subject to the following condition, namely:

That the societies in which non-members are employed amend their respective by-laws on the lines of the special by-laws relating to service conditions of persons employed in societies appended to this notification and also include the provisions of Chaps. II, III, V and VII of the Madras Shops and Establishments Act, 1947 (Madras Act XXXVI of 1947), in their standing orders and exhibit them in their premises.

5. This exemption was continued from year, to year by further notification issued by the Government. Before the exemption granted under these notifications could be claimed, the petitioner bank had to amend the by-laws and its standing orders. It was common ground that the by-laws were amended by the petitioner bank on 29 July 1955, to conform to the requirements of the notification issued u/s 6 of the Act. Section 12(1) of the Co-operative Societies Act requires registration of the amendment of bylaws by the Registrar before the amendments acquire validity. That registration was accorded on 15 November 1955. It was not disputed before me that the other requirements of the notification issued by the Government u/s 6 of the Act were complied with by the petitioner. Nor was it disputed that the statutory exemption u/s 6 of the Act became operative from 15 November 1955. The learned Counsel for the petitioner, no doubt, urged that the exemption became operative from 29 July 1955 when the petitioner bank amended its by-laws. But it is not necessary to consider the correctness of this contention. As I said, the respondents accepted the position that the exemption became operative from 15 November 1955, and that should be sufficient to dispose of the main contention of the petitioner in these proceedings.

6. The learned Counsel for the petitioner contended that, when the Additional

Commissioner passed his order on 11 January 1956 the* provisions of the Act, by virtue of the statutory exemption granted by Section 6, had ceased to apply to the petitioner, to the second respondent, as well as to the Additional Commissioner. That contention, as I pointed out earlier, was repelled by the Additional Commissioner when he passed his order dated 31 October 1955, overruling the preliminary objection on this ground, that the amendment of the by-laws had not been registered u/s 12 of the Co-operative Societies Act. Even that registration had been achieved before 16 December 1955, when the appeal came on for hearing again. Even on that occasion the objection to jurisdiction was persisted in and was again overruled by the order dated 11 January 1956. The decision of the Additional Commissioner being one on a jurisdictional issue, it is open to the petitioner to canvass the correctness of that decision in these proceedings under Article 226 of the Constitution.

7. That the provisions of the Act had ceased to apply to the petitioner and its employees by 11 January 1956, on which date the Additional Commissioner rendered his decision, could not be, and was not, in dispute. Equally clear was the position that on 14 May 1955, when the petitioner discharged the second respondent from its service and on the date when the second respondent preferred an appeal u/s 41 of the Act, the provisions of the Act applied to him and his employer. The Additional Commissioner recorded:

The cause of action for this appeal arose on the date of discharge. On that date the Act applied to the Bank and the appellant had a right of appeal u/s 41.... The objection raised by the bank is overruled.

Whether that view is correct is the question.

8. Sub-section (1) of Section 41 forbids the employer from dispensing with the services of a person employed continuously for a period of not less than six months except on the conditions specified in that sub-section, Sub-sections (2) and (3) of Section 41 run:

(2) The person employed shall have a right to appeal to such authority and within such time as may be prescribed

(3) The decision of the appellate authority shall be final and binding on both the employer and the person employed.

Each of Sub-sections (2) and (3) is a provision of the Act within the meaning of Section 6, and the exemption granted by the notification issued by the Government u/s 6 is from all the provisions of the Act. The provisions of the Act certainly did apply both to the petitioner and to the second respondent prior to 15 November 1955. The statutory right to appeal was validly exercised by the second respondent u/s 41(2) of the Act. That, however, is not enough. The question remains, had the Additional Commissioner power to render a decision on 11 January 1956, That power could be founded only on Section 41(3) of the Act, and that provision of the Act like the other provisions of the Act ceased to

apply before 11 January 1956. It ceased to apply at least on 15 November 1955 under the terms of Section 6 of the Act and the notifications issued thereunder. It was not merely the second respondent's right to appeal that governed the determination of the question of jurisdiction. The jurisdiction of the Appellate Tribunal to dispose of the appeal and render a decision which could be binding on both parties to the appeal could be founded only on Section 41(3) of the Act, and that jurisdiction had to continue, in this case, until 11 January 1956, the date of the order of the Additional Commissioner. As I said, the provisions of the Act did not apply and could not be invoked on 11 January 1956, and "the provisions the Act" included Section 41(3).

9. The learned Counsel for the respondents urged that it was a vested right to appeal u/s 41(2) that had accrued and was exercised by the second respondent in this case before the exemption granted u/s 6 of the Act came into play. It would be more correct to call it a statutory right. The right to appeal to a named tribunal was not a common law right. The right to reinstatement in the service of the employer who had terminated the service of the employee could be traced only to Section 41(3) of the Act, and that was again not a common law right, but only a statutory right. That right of reinstatement depended on the order passed u/s 41(3), and the right to pass that order again was only a statutory right. For the effective exercise of those rights in a given case, the provisions of the Act have to apply. If they ceased to apply, none of those rights could be claimed or exercised.

10 There was no direct decision to explain the scope of the exemption granted u/s 6 of the Act. Of the cases cited before me, the decision of Sir Ashutosh Mookerjee, J., in *Jyoti Prakas v. Bagala* 36 C. L.J. 124 comes nearest to this case in explaining the principle to be applied. In that case the settlement officer had the statutory jurisdiction when he was appointed to determine and reduce the rent payable by a tenant when the land was held by a Sonthal Chokdar. Before however the settlement officer could exercise his jurisdiction to determine the rent, the tenancy in question had passed into the hands of a non-Sonthal by a purchase in a court auction. The learned Judges held that the settlement officer had lost his jurisdiction to exercise the statutory power conferred upon him to determine the reduced rent payable on the holding. After quoting with approval the principles laid down by Miller, J., of the Supreme Court of United States in *Cooper v. Reynolds* (1870) 10 Wallace 308 "the power to render a decree or judgment which the court may undertake to make in the particular cause depends on the nature and extent of the authority vested in it by law in regard to the subject-matter of the cause." Mookerjee, J., laid down:

For the validity of a judgment in a suit, this jurisdiction over the subject-matter must exist throughout the proceedings as well at the time of its institution as at the time of its disposal.

The learned Judge further observed at p. 130:

In the case before us, the settlement officer had jurisdiction when he was appointed to exercise his power to reduce the rent of the disputed tenancy which at that time fell within the class of areas held by Sonthar Chokdars. Before he could exercise his jurisdiction, the tenancy has passed into the hands of the non-Sonthal. Consequently the settlement officer lost his jurisdiction over the area and could no longer exercise the power conferred on him. The proceedings taken by him subsequent thereto were without jurisdiction and could not affect the subject-matter of the litigation.

Adapting the words of the learned Judge and applying the principle laid down there, I hold the Additional Commissioner had jurisdiction when the appeal was presented to him u/s 41(2) of the Act to render a decision u/s 41(3). Before he could exercise his jurisdiction, the provisions of the Act ceased to apply to the petitioner and his employee, who was the appellant before the Additional Commissioner. Consequently the Additional Commissioner lost his jurisdiction and could no longer exercise the power conferred upon him. The proceedings taken by the Additional Commissioner subsequent to 15 November 1955, when the statutory exemption u/s 6 of the Act came into play, were without jurisdiction and could not affect the subject-matter of the appeal that had been presented to him.

11. Of the cases cited by the learned Counsel for the petitioner the Queen v. Mawgan 112 E.R. 927 and the Queen v. Denton 118 B.R. 287, in which the principle laid down in the earlier case was followed, dealt with positions which arose when an Act was repealed. Spencer v. Hooton 37 T.L.R. 280 dealt with a case of a temporary enactment having expired by efflux of time when it was sought to enforce its provisions. The case before me is not analogous to either of these classes of cases. It should be remembered that specific statutory provision has been made in Section 8 of the Madras General Clauses Act I of 1891, Refining the effect and consequence of the repeal of an enactment. The situation created in this case by the exemption coming into play u/s 6 of the Act will not fall within the scope of Section 8 of the General Clauses Act. Not could it be said to be a case of a temporary enactment ceasing to be operative by mere efflux of time.

12. The learned Government Pleader referred to Venugopala Reddiar v. Krishnaswami Reddiar 1943 F.C.R. 39, and to the observations of Varadachariar, J., at pp. 43 to 45. The principle that underlay the decision of the Privy Council in Colonial Sugar Refining Company v. Irwing 1905 A.C. 369, which was followed in that case, may have no application either in determining the effect and the legal consequences of an exemption granted u/s 6 of the Act.

13. The only question raised before me in these proceedings was, whether on 11 January 1956 the Additional Commissioner had jurisdiction to pass the order he did; and that question I must answer in the negative.

14. The rule is made absolute. The petition is allowed. There will be no order as

to costs.