State Bank'S Staff Union Madras vs Union Of India & Ors on 15 September, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3446, 2005 AIR SCW 4622, 2005 LAB. I. C. 4257, (2005) 6 ALL WC 5172, (2005) 5 CTC 629 (SC), 2005 (9) SRJ 45, 2005 (7) SLT 173, 2005 (7) SCALE 296, 2005 (7) SCC 584, (2005) 8 JT 315 (SC), 2005 (5) CTC 629, 2005 SCC (L&S) 994, (2005) 3 LABLJ 854, (2005) 107 FACLR 737, (2005) 4 LAB LN 391, (2006) 1 SCT 472, (2005) 7 SCJ 368, (2005) 5 SERVLR 731, (2005) 6 SUPREME 522, (2005) 7 SCALE 296, (2005) 2 WLC(SC)CVL 754, (2006) 1 CURLJ(CCR) 329, (2005) 3 CURLR 817

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Bench: Arijit Pasayat, H. K. Sema

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           CASE NO.:
Appeal (civil)  3396 of 2001

PETITIONER:
State Bank's Staff Union Madras

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 15/09/2005

BENCH:
ARIJIT PASAYAT & H. K. SEMA

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

Challenge in this Appeal is to judgment of a Division Bench of Madras High Court holding that customary bonus was not payable by the State Bank of India (in short the 'Bank') after Banking Laws (Amendment) Act, 1984 (Central Act No. 64 of 1984) (in short the 'Amendment Act') was enacted. Appellant has questioned constitutional validity of the said amendment before the Madras High Court by filing a writ petition which was dismissed.

Factual position which is almost undisputed is as follows:-

> By the Amendment Act, State Bank of India Act, 1955 (in short the 'State Bank Act') and State Bank of India (Subsidiary Banks) Act, 1959 (in short the 'Subsidiary Act') and Banking Companies (Acquisition and Transfer of Undertakings) Acts, 1970 and

the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (in short 'the Undertakings Acts') were amended.

By that amending Act, a new Section 43-A comprising of three sub sections (1), (2) and (3) and marginal heading "Bonus" was introduced in the State Bank Act. The said Section reads as under:-

"(1) No Officer, Adviser or other Employee (other than an employee within the meaning of Clause (13) of Section 2 of the Payment of Bonus Act, 1965 (21 of 1965) of the State Bank shall be entitled to be paid any bonus.

(2) No employee of the State Bank, being an employee within the meaning of Clause (13) of Section 2 of the Payment of Bonus Act, 1965 (21 of 1965), shall be entitled to be paid any bonus except in accordance with the provisions of that Act.

(3) The provisions of this Section shall have effect notwithstanding any judgment, decree or order of any Court, Tribunal or other authority and notwithstanding anything contained in any other provision of this Act or in the Industrial Disputes Act, 1947 (14 of 1947), or any other law for the time being in force or any practice usage or custom or any contract, agreement, settlement, award or other instrument."

In the Subsidiary Act, a new Section 50A was introduced in identical language. Similar provisions numbered as Section 12-A were introduced in the Banking Undertakings Acts.

The Statement of Objects and Reasons, which accompanied the Bill which later became the Amending Act, reads thus:

"In an award notified as 14.1.1984, the Central Government Industrial Tribunal, Madras held that the employees of the State Bank of India covered by the award should be paid bonus at the rate of one month's substantive pay every half year on the ground that this has also along been the custom and practice. A writ petition filed against this award is pending in the Madras High Court.

All public Sector banks including the State Bank of India come under the purview of the Payment of Bonus Act, 1965, and the intention is that no bonus other than what is required to be paid under the Payment of Bonus Act, 1965, shall be paid to the employee of the State Bank of India or of any other pubic sector bank. It is proposed to make express provisions in this behalf in the State Bank of India Act, 1955 and the enactment relating to the other public sector banks.

The Bill seeks to achieve the above objects."

That award of the Central Government Industrial Tribunal was challenged by the Management in a writ petition filed in the Madras High Court being Writ Petition No.1273 of 1984. It was during the

pendency of that petition in the High Court, that the State Bank Act came to be amended by introducing Section 43-A in that Act. On 24.11.1986, the Writ Petition filed by the Bank was dismissed. The matter was not further agitated, and the award attained finality.

Appellant's primary stand before the High Court was that the Amendment Act was unconstitutional as it merely intended to nullify a judicial decision which Parliament had no competence to do. Other contentions were to the effect that an award passed under the Industrial Disputes Act, 1947 (in short 'the Industrial Act') is entitled to greater recognition as in the case of conflict between the provisions of General Law i.e. State Bank Act and the Industrial Act the latter Act must prevail. The bonus which was directed to be paid was in the nature of deferred wages and the impugned legislation had the effect of freezing wages. Parliament is not vested with the power to reduce the wages and therefore the legislation is ultra vires. Effect of an award under the Industrial Act cannot be wiped out except in the manner provided under the Industrial Act and since in the instant case that has not been done, the award was binding on the parties concerned. The bonus being a customary bonus was peculiar to the employees of the Bank and mere fact that other public sector banks were not being paid such bonus is of really no consequence. Stand that financial implications were enormous is also of no consequence. The Union of India and the Bank took the stand that the Amendment Act was a valid piece of legislation. It was not merely intended to invalidate an award by acting as an Appellate Authority, and it is not a case of any judicial power being usurped by the legislation. The High Court negatived the contentions of the appellants and dismissed the Writ Petition.

The points urged before the High Court was reiterated by learned counsel for the appellant. Reference was made to a decision of this Court in Vegetable Products Ltd. v. Their Workmen (AIR 1965 SCC 1499) to highlight the basic features of customary bonus.

It was submitted in the case of officers of the Bank that the quantum representing bonus merged with the basic pay and consequential increase in Dearness Allowance and superannuation benefits were granted. That being so, bonus is nothing but deferred wage. Continued payment of bonus made it a condition of service and the same could not have been altered without following the provisions of Section 9A of the Act. Customary bonus is one which is paid dehors the bonus paid under the Payment of Bonus Act, 1965 (in short the 'Bonus Act'). Customary bonus is untouched by the Bonus Act. The Industrial Act is a special Act qua the State Bank Act. Issues relating to continuance of service and disputes relating thereof are covered by the Industrial Act. While some of the aspects can be taken to be covered by the State Bank Act, non compliance with the special Act i.e. Industrial Act rendered the Amendment Act invalid. The intention of the Amendment Act was to invalidate the award as is evident from the Statement of Objects and Reasons of the Amendment Act. Customary bonus is not profit linked. Amendment even if accepted to be valid can only have prospective effect.

In response, learned counsel for the Bank and the Union of India submitted that the payment of customary bonus was creating different yardsticks for different public sector banks. The award was challenged by the Bank in a Writ Petition. During the pendency of the writ petition, the amendment was enacted. Unfortunately the High Court did not take note of the Amendment Act and Custom even if it acquires a force of law, can be changed as there is no fundamental right involved in any custom. Bonus cannot be called deferred wages and even if it is conceded for the sake of argument

that the payment of customary bonus was a condition of service, after insertion of Section 43A by the Amendment Act the same has no operation. The provision brings about uniformity. The payments were related to profits and they were not uniform, so in that sense it was not really be a condition of service or a deferred wage. The High Court has also dealt with the Special Act and the deferred wages concept. The Amendment Act really brought in a curative provision, and no retrospective effect has been given to the Amendment Act. Section 9A of the Industrial Act has no application as the Parliament has the power to legislate on that aspect. A bare look at the impugned provision makes it clear that it is not a case of legislature by mere declaration or without anything more, overriding a judicial decision. On the other hand it is a case of rendering a judicial decision ineffective by enacting a valid law within legislative field of the legislature. Merely because a reference has been made to the award in the Statement of Objects and Reasons, that cannot in any way affect the plain intention in enacting the law under challenge and it is not correct to say that the intention was to declare the decision of Tribunal as invalid and as such judicial power has been usurped by legislation.

Following four circumstances have to be fulfilled in order to be entitled to payment of customary or traditional bonus, as was noted in M/s. Grahams Trading Co. v. Their Workmen (AIR 1959 SC 1151) and in Vegetable Products case (supra):

> "(i) that the payment has been made over an unbroken series of years;
>
> (ii) that it has been for a sufficiently long period, the period has to be longer than in the case of an implied term of employment;
>
> (iii) that it has been paid even in years of loss and did not depend on the earning of profits; and
>
> (iv) that the payment has been made at a uniform rate throughout to justify an inference that the payment at such and such rate had become customary and traditional in the particular concern."

Learned counsel for the appellant submitted that considering the nature of customary bonus, the Amendment Act was really taking away a right conferred. This Court in Upendra Chandra Chakraborty and Anr. v. United Bank of India (AIR 1985 SC 1010) observed as follows:-

> "There is one other aspect of the claim now put forward, which cannot be lost sight of, which affords an additional reason to reject the contention of the appellants. The respondent is a nationalized bank. Roughly in all there are 25 nationalised banks. The concept of any customary bonus is unknown to nationalized banks. All the nationalized banks are wholly owned Undertakings of the Government of India. In the matter of bonus, the employees of all the nationalized banks must be dealt with on a common denominator. If therefore the contention of the appellants were to prevail, the employees of the respondent, which is only one amongst many nationalized banks, would enjoy an undeserved advantage compared to their

> counterparts in other nationalized banks and even in the other branches of the respondent bank and may become a cause of disharmony and inequality. Therefore, in larger public interest also, the demand for customary bonus otherwise found to be untenable, must be negatived."

(Underlined for emphasis) It is a cardinal rule of interpretation that Objects and Reasons of a Statute is to be looked into as an extrinsic aid to find out legislative intent only when the meaning of the statute by its ordinary language is obscure or ambiguous. But if the words used in a statute are clear and unambiguous then the statute itself declares the intention of the legislature and in such a case, it would not be permissible for a court to interpret the Statute by examining the Objects and Reasons for the Statute in question.(See: S.S. Bola vs. B.D. Sardana AIR 1997 SC 3127).

The smooth balance built with delicacy must always be maintained, and in the anxiety to safeguard judicial power, it is unnecessary to be over-zealous and conjure up incursion into the judicial preserve to invalidate the valid law competently made. (see: Indian Aluminium Co. vs. State of Kerala 1996(7) SCC 637).

In Jalan Trading Co. vs. Mill Mazdoor Sabha (AIR 1967 SC 691) it was observed as follows:

> "It is true that by the impugned legislation, certain principles declared by this Court e.g. in Express Newspapers (Private) Ltd. vs. Union of India, 1959 SCR 12: AIR 1958 SC 578) in respect of grant of bonus were modified, but on that account it cannot be said that the legislation operates as fraud on the Constitution or is a colourable exercise of legislative power. Parliament has normally power within the frame-work of the Constitution to enact legislation which modified principles enunciated by this Court as applicable to the determination of any dispute, and by exercising that power, the Parliament does not perpetrate fraud on the Constitution. An enactment may be charged as colourable, and on that account valid, only if it be found that the legislature has by enacting it trespassed upon a field outside its competence."

In the Indian Aluminium case (supra) in paragraph 56 certain principles have been set out. Those principles inter alia include the principles that the Court in its anxiety to safeguard judicial power must not be over- zealous and conjure up incursion into the judicial preserve invalidating the valid law competently made; the Court should scan the law to find out : (a) whether the vice pointed out by the court and invalidity suffered by previous law is cured after complying with the legal and constitutional requirements; (b) whether the Legislature has competence to validate the law; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution. So far as the legislature is concerned, it cannot by mere declaration, without anything more, overrule, revise, or override a judicial decision. It may, however, render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions should be such that the previous decision would not have been rendered by the Court, if those altered or changed conditions had existed at the time of declaring the law as invalid.

At this juncture, we may also take note of what was stated by Hidaytullah, CJI in the case of Shri Prithvi Cotton Mills Ltd. vs. Broach Borough Municipality (1969 (2) SCC 283):

> "A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances."

The principle was reiterated in State of Tamil Nadu v. Arooran Sugars Ltd. (1997 (1) SCC 326).

As was noted by the Constitution Bench of this Court in Chairman, Railway Board & Ors. v. C.R. Rangadhamaiah & Ors. (1997 (6) SCC 623), once a person joins service under the Government, the relationship between him and the Government is in the nature of a status rather than contractual and the terms of his service while he is in employment, are governed by statute or statutory rules, which may be altered without the consent of the employees. This effect of a non-obstante clause and validating Act has been examined by this Court from time to time. Reference has already been made to the decision in Shri Prithvi Cotton Mills Ltd. (supra). The view expressed by Hidayatullah, C.J.I. has been reiterated in Arooran Sugars case (supra).

The decision in Madan Mohan Pathak v. Union of India (1978 (2) SCC 50) which was one of the major planks of arguments before the High Court and this Court was explained in the last named case. It was rendered in the different factual background. This was categorically pointed out and the decision was explained in the said case.

Every sovereign legislature possesses the right to make retrospective legislation. The power to make laws includes power to give it retrospective effect. Craies on Statute Law (7th Edn.) at p. 387 defines retrospective statutes in the following words:

> "A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past."

Judicial Dictionary (13th Edn.) K.J. Aiyar, Butterworth, p. 857, states that the word "retrospective" when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) reopening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. Words and Phrases, Permanent Edn., Vol. 37-A, pp. 224-25, defines a "retrospective or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transaction or considerations already past.

In Advanced Law Lexicon by P. Ramanath Aiyar (3rd Edition, 2005) the expressions "retroactive" and "retrospective" have been defined as follows at page 4124 Vol.4) "Retroactive- Acting backward; affecting what is past. (Of a statute, ruling, etc.) extending in scope or effect to matters that have

occurred in the past. - Also termed retrospective. (Black, 7th Edn. 1999) 'Retroactivity' is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called 'true retroactivity', consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as 'quasi-retroactivity', occurs when a new rule of law is applied to an act or transaction in the process of completion.....The foundation of these concepts is the distinction between completed and pending transactions...." (T.C. Hartley, The Foundations of European Community Law 129 (1981).

Retrospective- Looking back; contemplating what is past.

Having operation from a past time.

'Retrospective' is somewhat ambiguous and that good deal of confusion has been caused by the fact that it is used in more senses than one. In general however the Courts regards as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects even if for the future only the character or consequences of transactions previously entered into or of other past conduct. Thus, a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisite for its action is drawn from a time and antecedents to its passing. (Vol.44 Halsbury's Laws of England, Fourth Edition, page 570 para 921)."

The question of retrospectively affecting the award is factually of academic interest. It was admitted before the High Court that all amount payable under the award for the prior period has been paid.

In Harvard Law Review, Vol. 73, p. 692 it was observed that "it is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus the interest in the retroactive curing of such a defect in the administration of government outweighs the individual's interest in benefiting from the defect".

The above passage was quoted with approval by the Constitution Bench of this Court in the case of The Asstt. Commr. of Urban Land Tax v. The Buckingham and Carnatic Co. Ltd. (1969 (2) SCC 55). In considering the question as to whether the legislative power to amend a provision with retrospective operation has been reasonably exercised or not, various factors have to be considered. It was observed in the case of Stott v. Stott Realty Co. (284 N.W. 635) - as noted in Words and Phrases, Permanent Edn., Vol.37-A, p. 2250 that:

> "The constitutional prohibition of the passage of 'retroactive laws' refers only to retroactive laws that injuriously affect some substantial or vested right, and does not refer to those remedies adopted by a legislative body for the purpose of providing a rule to secure for its citizens the enjoyment of some natural right, equitable and just

> in itself, but which they were not able to enforce on account of defects in the law or its omission to provide the relief necessary to secure such right."

Craies on Statute Law (7th Edn.) at p. 396 observes that:

> "If a statute is passed for the purpose of protecting the public against some evil or abuse, it may be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right."

Thus public interest at large is one of the relevant considerations in determining the constitutional validity of a retrospective legislation.

The above position was elaborately noted in Virendra Singh Hooda and Ors. v. State of Haryana & Anr. (2004 (12) SCC 588).

Curative Statutes are by their very nature intended to operate upon and affect past transactions. Curative and validating statutes operate on conditions already existing and are therefore wholly retrospective and can have no retrospective operation.

Blackstone J in Nicol v. Verelst (1779 (26) E.R. 751) held that "declaratory do not prove that law was otherwise before, but rather the reverse".

There is no quarrel and in fact in our opinion rightly that legislature cannot by a mere declaration, without anything more, directly overrule, reverse or override a judicial decision. However, it may, at any time in exercise of the plenary powers conferred on it by the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field, fundamentally altering or changing with retrospective, curative or neutralizing effect the condition on which such decision is based (see: I.N. Saxena etc. v. State of Madhya Pradesh (1976 (4) SCC 750).

As noted in Indira Nehru Gandhi v. Raj Narain (1975 (suppl.) SCC 1) rendering ineffective of judgments or orders of competent Courts or Tribunals by changing their basis by legislative enactment is a well known pattern of all validating Acts. Such validating legislation which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial power. There is a distinction between encroachment on the judicial power and nullification of the effect of a judicial decision by changing the law retrospectively. As noted by this Court in M/s. Tirath Ram Rajindra Nath, Lucknow v. State of U.P. and Anr. (1973 (3) SCC 585) the former is outside the competence of the legislature but the latter is within its permissible limits.

It has to be noted that the legislature, as a body, cannot be accused of having passed a law for extraneous purpose. If no reasons are stated as appear from the provisions enacted by it, its reasons for passing a law are those stated in the Objects and Reasons. Even assuming that the Executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of "Transferred malice" is unknown in the field of legislation. (See K. Nagaraj and Ors. v. State of Andhra Pradesh and Anr. (AIR 1985 SC 551) and G.C. Kanungo v. State

of Orissa (AIR 1995 SC 1655).

Learned counsel for the appellant submitted that vested rights cannot be taken away by the legislation by way of retrospective legislation. The plea is without substance. Whenever any amendment is brought in force retrospectively or any provision of the Act is deleted retrospectively, in this process rights of some are bound to be effective one way or the other. In every case the exercise by legislature by introducing a new provision or deleting an existing provision with retrospective effect per se does not amount to violation of Article 14 of the Constitution. The legislature can change, as observed by this Court in Cauvery Water Disputes Tribunal, Re (1993 Supp. (1) SCC 96 (II)), the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter parties and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power by the State and to function as an appellate Court or Tribunal, which is against the concept of separation of powers.

The amendment made by the impugned enactments is to the State Bank Act and other statutes relating to some other Banks. The Bank undoubtedly has power in terms of Section 7(1) of the State Bank Act to change the conditions of service of those of its employees, who had earlier served with Imperial Bank of India. By enforcement of the Act, the undertaking of Imperial Bank of India was transferred to the Bank. Employees of erstwhile Imperial Bank of India cannot take the stand that they have an unalterable right in their terms and conditions of employment. So far as other employees are concerned, Section 43 of the Act empowers the Bank to determine terms and conditions of their service.

The Parliament has power to legislate on the topic of bonus and it is not precluded from legislating on that topic, other than the Bonus Act. The mere fact that an award has been made under the Industrial Act cannot have the effect of preventing the Parliament for all times to come from amending the law on the foundation of which the award was made. This of course is subject to same being not inconsistent with provision of Part III of the Constitution; and also being within the legislative competence of the Parliament.

As noted above, the impugned Act did not merely declare the Tribunal's award inoperative. There is nothing to show that the Parliament intended to exercise appellate powers over the Tribunal or the High Court by enacting the amending Act. The said Act in clear and unambiguous terms prohibits the grant of bonus to the employees of public Sector Banks, except in accordance with the Bonus Act, and also limits such payment only to those eligible under the Act.

The amended provision operates notwithstanding anything contained in any other law, including the Industrial Act, and similarly notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal.

In view of what has been stated above, the conclusion is inevitable that the High Court's judgment does not suffer from any infirmity to warrant interference. The appeal is accordingly dismissed with no orders as to costs.