State Of M.P vs Union Of India & Anr on 17 August, 2011

Equivalent citations: AIR 2012 SUPREME COURT 2518, 2012 AIR SCW 771, 2011 (9) SCALE 6, (2011) 2 CLR 534 (SC), 2011 (12) SCC 268, AIR 2012 SC (CIVIL) 558, (2011) 9 SCALE 6, (2011) 5 ALL WC 5382

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO. 4 OF 2009

IN

ORIGINAL SUIT NO. 6 OF 2004

State of Madhya Pradesh .... Applicant(s)/ Plaintiff

Versus

Union of India & Anr. .... Respondent(s)/ Defendants

J U D G M E N T

P. Sathasivam, J.

1) In the year 2004, the State of Madhya Pradesh has filed Original Suit No. 6 of 2004 before this Court under Article 131 of the Constitution of India calling for the records relating to the impugned Notifications/Orders dated 02.11.2004 and 04.11.2004 issued by the Ist Defendant-Union of India under Sections 58(3) and 58(4) of the Madhya Pradesh Re-

organisation Act, 2000 (hereinafter referred to as "MPR Act"), notifying the date of dissolution of the M.P. Electricity Board (in short "the MPEB") for the undivided State of Madhya Pradesh and apportioning its assets, rights and liabilities between the successor Electricity Boards for the reorganized States of Madhya Pradesh and Chhattisgarh and to declare them null and void as the same are unconstitutional and for certain other reliefs.

2) In the said suit, the plaintiff-State of Madhya Pradesh filed an application for amendment of plaint being I.A. No.4 of 2009 seeking, inter alia, the amendment to the effect that Sections 58(3) and 58(4) of the MPR Act are violative of Article 14 of the Constitution of India inasmuch as it enables the Central Government to determine without any guidelines the manner of exercise of power while deciding the basis of apportionment of the assets and liabilities of the successor Boards.

3) Ist Defendant-Union of India, apart from disputing its maintainability on delay and laches also contested on merits.

4) 2nd Defendant-State of Chhattisgarh has objected to the amendment on the ground that the same is totally misconceived and untenable in law and that no recourse whatsoever can be permitted to challenge the validity of a Central law under the exclusive jurisdiction of this Court under Article 131 of the Constitution of India. The State of Chhattisgarh has also contended that the plaintiff-State of M.P., on the one hand is seeking a prayer that Ist Defendant must perform its duty in accordance with the Statute and, on the other hand, is challenging the validity of the very same Statute and, therefore, it is liable to be dismissed.

5) Heard Mr. C.S. Vaidyanathan, learned senior counsel for the applicant/plaintiff-State of Madhya Pradesh, Mr. H.P. Raval, learned Additional Solicitor General for Respondent No. 1/Ist Defendant-Union of India and Mr. Ravi Shankar Prasad, learned senior counsel for Respondent No. 2/2nd Defendant-

State of Chhattisgarh.

6) In view of the fact that at present we are concerned with I.A.No.4 of 2009 - application for amendment of plaint, there is no need to traverse all the factual details as stated in the plaint and written statement. However, it is relevant to point out the reliefs prayed for by the plaintiff in the main suit which are as under:

> "(a) Call for the records relating to the impugned Notifications/Orders dated 02.11.2004 and 04.11.2004 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 12.04.2001, 04.12.2001 and 23.05.2003 passed by the 1st defendant under Section 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 Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

7) In the present application, i.e., I.A. No.4 of 2009, the applicant-State of M.P. has prayed for amendment of the plaint by adding the following relief:

"(b) to permit additional relief to be incorporated in the Plaint viz., declare Sections 58(3) and 58(4) of the Madhya Pradesh State Re-organisation Act, 2000 is being unconstitutional, arbitrary and violative of Article 14 of the Constitution"

8) In order to consider the claim of the plaintiff and the opposition of the defendants, it is desirable to refer the relevant provisions. Order VI Rule 17 of the Code of Civil Procedure, 1908 (in short `the Code') enables the parties to make amendment of the plaint which reads as under;

"17. Amendment of pleadings - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

The above provision deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

The proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it must be shown that in spite of due diligence, such

amendment could not have been sought earlier. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the Courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs.

Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

9) Inasmuch as the plaintiff-State of Madhya Pradesh has approached this Court invoking the original jurisdiction under Article 131 of the Constitution of India, the Rules framed by this Court, i.e., The Supreme Court Rules, 1966 (in short `the Rules) have to be applied to the case on hand. Order XXVI speaks about "Pleadings Generally". Among various rules, we are concerned about Rule 8 which reads as under:

> "The Court may, at any stage of the proceedings, allow either party to amend his pleading in such manner and on such terms as may be just, but only such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties."

The above provision, which is similar to Order VI Rule 17 of the Code prescribes that at any stage of the proceedings, the Court may allow either party to amend his pleadings.

However, it must be established that the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties.

10) This Court, while considering Order VI Rule 17 of the Code, in several judgments has laid down the principles to be applicable in the case of amendment of plaint which are as follows:

> (i) Surender Kumar Sharma v. Makhan Singh, (2009) 10 SCC 626, at para 5:
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> "5. As noted hereinearlier, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment."

(ii) North Eastern Railway Administration, Gorakhpur v.

Bhagwan Das (dead) by LRS, (2008) 8 SCC 511, at para16:

> "16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs."

(iii) Usha Devi v. Rijwan Ahamd and Others, (2008) 3 SCC 717, at para 13:

> "13. Mr Bharuka, on the other hand, invited our attention to another decision of this Court in Baldev Singh v. Manohar Singh. In para 17 of the decision, it was held and observed as follows: (SCC pp. 504-05) "17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion on the court to allow an amendment of the written statement at any stage of the proceedings."

(iv) Rajesh Kumar Aggarwal and Others v. K.K. Modi and Others, (2006) 4 SCC 385, at paras 15 & 16:

"15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties."

(v) Revajeetu Builders and Developers v.

Narayanaswamy and Sons and Others, (2009) 10 SCC 84, at para 63:

> "63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:
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> (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
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> (2) whether the application for amendment is bona fide or mala fide;
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> (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
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> (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
>
> (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case;

and (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive."

The above principles make it clear that Courts have ample power to allow the application for amendment of the plaint.

However, it must be satisfied that the same is required in the interest of justice and for the purpose of determination of real question in controversy between the parties. We have already pointed out the relief prayed for in the plaint. According to the plaintiff-State of Madhya Pradesh, the Notifications/Orders dated 02.11.2004 and 04.11.2004 have to be declared null and void since the same are unconstitutional and in violation of Article 14 of the Constitution of India. The other relief, prayed for by the plaintiff, is to direct the Ist Defendant-Union of India to dissolve the MPEB in consonance with the orders/directions dated 12.04.2001, 04.12.2001 and 23.05.2003 passed by the Union of India under Section 58(4) of MPR Act. In addition, the plaintiff-State of M.P. has also prayed for to direct the Union of India by way of mandatory injunction to perform its constitutional

and 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.

11) Mr. C. S. Vaidyanathan, learned senior counsel for the plaintiff-State of M.P., by drawing our attention to various averments in the plaint relating to the purported exercise of power by the Central Government submitted that the same being arbitrary, unjust and unfair had resulted in serious anomalies in the apportionment of assets and liabilities by the impugned Notifications/Orders dated 02.11.2004 and 04.11.2004. He also pointed out that the impugned Notifications/Orders have resulted in an unequal division of generating capacity, created a huge gap in demand and supply, affecting the power supply and also the finances of the Board of the plaintiff-State. He further pointed out that Sections 58(3) and 58(4) of MPR Act provided unguided powers to the Central Government to determine the apportionment of assets, rights and liabilities between the successor States of M.P. and Chhattisgarh. According to him, these provisions do not provide for the Central Government to record reasons in support of its decision. In the absence of any guidelines, any decision by the Central Government is arbitrary, unjust, unfair, unreasonable, unconstitutional and violative of Article 14 of the Constitution of India, in particular. In those circumstances, according to him, the amendment of plaint sought for is reasonable and acceptable.

12) As against the above claim, Mr Rawal, learned ASG, appearing for the Union of India submitted that there is no merit in the claim for amendment of plaint. At any rate, the amendment sought for is not maintainable at this juncture.

13) Mr. Ravi Shankar Prasad, learned senior counsel for second Defendant-State of Chhattisgarh strongly objected the proposed amendment both on the ground of delay and laches and on merits. Mr. Prasad highlighted that verification of the Court proceedings would show that the pleadings in the suit are complete, evidence by way of affidavits has been filed, issues for adjudication have been framed, admission/denial of documents filed in support of the pleadings have taken place and the suit is now to be finally heard by this Court. He also contended that the application at this belated stage is not maintainable.

14) It is not in dispute that after complying all the formalities even as early as on 16.04.2007, this Court has framed issues and as rightly pointed out by Mr Prasad, the suit could have been disposed of by that time, however, the plaintiff has filed the present application for amendment of plaint at this belated stage. It is true that there is no embargo in Order VI Rule 17 of the Code and in Order XXVI Rule 8 of the Rules which alone govern the procedural aspects. However, the fact remains that the plaintiff has not assigned any reason for not taking steps when the State had approached this Court under Article 131 by way of a suit even in the year 2004 and waited till 2009.

15) The next objection of the learned counsel for the 2nd Defendant is that in the light of the language used in Rule 8 of Order XXVI of the Rules, the present application for amendment substantially alters the nature of lis/claim originally preferred by the plaintiff-State of M.P. We have already adverted to the reliefs prayed for in the suit. The main relief relates to scope and manner of

exercise of power by the Central Government under Sections 58(3) and 58(4) of the MPR Act qua dissolution of the erstwhile MPEB and apportionment of its assets, rights and liabilities between the successor Electricity Boards of the reorganized States. The claim was that the purported exercise of power by the Central Government was arbitrary, unjust and unfair and had resulted in serious anomalies in apportionment of assets and liabilities between the two Boards by the impugned Notification/Orders dated 02.11.2004 and 04.11.2004. What was challenged was the manner of exercise of power by the Central Government and not the statutory provisions in the form of Sections 58(3) and 58(4) of the MPR Act which vested such powers in the Central Government. As rightly pointed out by the learned senior counsel for the defendants throughout the pendency of the suit since 01.12.2004, no issue whatsoever was ever raised by the plaintiff as to the validity or constitutionality of these statutory provisions.

16) It is brought to our notice that MPEB being the successor Electricity Board for the reorganized State of M.P., a necessary party to the present lis, had filed a separate Writ Petition being No. 675 of 2004 before this Court under Article 32 of the Constitution of India where identical pleadings and prayers were made. There is no serious dispute as to the relief prayed in the said writ petition. Though the MPEB approached this Court by way of a writ petition under Article 32, admittedly, the vires of those sections were never challenged.

Subsequently, the said writ petition being No. 675 of 2004 along with three other writ petitions were disposed of by this Court vide judgment dated 13.09.2006. It is not clear and not explained to this Court why such recourse was not adopted when the MPEB itself had approached this Court by way of a writ petition to challenge the vires of those provisions and, ultimately, this Court dismissed the said writ petition filed by the Board. It is to be noted that this Court did not find any infirmity whatsoever in the manner of exercise of power by the Central Government under Sections 58(3) and 58(4) of the MPR Act while upholding the notifications dated 02.11.2004 and 04.11.2004 as being constitutional and not suffering from any vice of arbitrariness as claimed by the plaintiff-State of M.P. and MPEB. It was also pointed out and also not in dispute that in the said writ petition, the present plaintiff was also a party, even then the plea of constitutionality was not raised.

17) By way of present amendment, the plaintiff-State of M.P. is seeking to challenge the validity of the Central law in a proceeding (suit) initiated under Article 131 of the Constitution. Normally, for questions relating to validity of Central or other laws, the appropriate forum is the extraordinary writ jurisdiction under Articles 32 and 226 of the Constitution of India in a writ petition and not an original suit filed under Article 131 which vests exclusive jurisdiction of this Court as regards the dispute enumerated therein. It is relevant to point out that Article 131A of the Constitution inserted by (42nd Amendment) Act 1976, provides for exclusive jurisdiction to this Court in regard to questions as to constitutionality of Central laws. The said Article 131A viewed as substantially curtailing the power of judicial review of the writ courts, that is, High Courts under Article 226 and this Court under Article 32 was omitted vide Constitution (43rd Amendment) Act, 1977. It follows that when the Central laws can be challenged in the State High Courts as well and also before this Court under Article 32, normally, no recourse can be permitted to challenge the validity of a Central law under the exclusive original jurisdiction of this Court provided under Article 131.

18) As regards the absence of guidelines in the provisions of Sections 58(3) and 58(4) of MPR Act, on behalf of the defendants it was pointed out that the manner of exercise of power by the Central Government has been laid down in the Sections itself. It is further pointed out that various correspondences exchanged between the plaintiff and the defendants placed on record would show that the plaintiff has never acted under the very same provisions, instead the plaintiff-State has constituted its own Electricity Board. It is also pointed out that the Ist Defendant-Union of India, in its written statement highlighted that the Central Government did resolve the dispute by passing the impugned Notifications after considering the claims of the affected parties.

19) Finally, the original plaint proceeds that the exercise of power by the Central Government by passing the impugned Notifications dated 02.11.2004 and 04.11.2004 under Sections 58(3) and 58(4) of the MPR Act was arbitrary, unjust and unfair and had resulted in serious anomalies in the apportionment of assets and liabilities. In our view, after praying for such relief, if the amendment as sought for by the plaintiff is allowed and the plaintiff is permitted to challenge the vires of the said provisions, then the very basis on which the plaintiff is claiming its right to apportionment of assets, rights and liabilities of the undivided Board will cease to be in existence and the entire suit of the plaintiff will be rendered infructuous. Moreover, it is settled principle of law that leave to amend will be refused if it introduces a totally different, new and inconsistent case or challenges the fundamental character of the suit.

20) In spite of the above conclusion, we feel that the plaintiff may be given an opportunity to put forth its stand that the Central Government issued impugned Notifications/Orders without proper guidelines and affording opportunity to the parties concerned. It is made clear that we have not either accepted or concluded the said claim of the plaintiff but in the interest of justice, plaintiff-State of M.P. is permitted to raise such objections at the time of trial by placing acceptable materials.

21) With the above observation, I.A. No. 4 of 2009 is disposed of with no order as to costs.

.....J. (P. SATHASIVAM) .....J. (DR. B.S. CHAUHAN) NEW DELHI;

AUGUST 17, 2011.