Supreme Court of India
Andhra Pradesh State Electricity ... vs Union Of India & Anr on 11 March, 1988
Equivalent citations: 1988 AIR 1020, 1988 SCR (3) 216
Author: M Venkatachalliah
Bench: Venkatachalliah, M.N. (J)

PETITIONER:
ANDHRA PRADESH STATE ELECTRICITY BOARD

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT11/03/1988

BENCH:
VENKATACHALLIAH, M.N. (J)
BENCH:
VENKATACHALLIAH, M.N. (J)
NATRAJAN, S. (J)

CITATION:
1988 AIR 1020 1988 SCR (3) 216
1988 SCC Supl. 371 JT 1988 (2) 35
1988 SCALE (1)642

ACT:
Emergency Risks (Factories) Insurance Act, 1962/ [Emergency Risks (Factories) Insurance Scheme-Sections 2, 11 and 17/Clause 7 of Scheme-'Distribution and Transmission lines'-Whether constitute 'insurable property'-'Property insurable under this Act'-Interpretation of-Grant of depreciation while ascertaining value of insurable property-Whether principles of Income Tax Act or Electricity (Supply) Act to apply.
General Clauses Act-Applicability to expired temporary-statutes-Effect of section 6 specifically invoked-Effect of.

HEADNOTE:
%
The Emergency Risks (Factories) Insurance Act, 1962 was enacted to provide for expeditious rehabilitation of industrial undertakings in the event of damage in times of war. The Central Government accordingly undertook to insure the factories against war-risks. The Act envisaged the promulgation and effectuation of the Emergency Risks (Factories) Insurance Scheme mandating a compulsory insurance of factories against war-risks on payment of prescribed premia.

The Director of Emergency Risks Insurance Scheme, after giving an opportunity to the appellant to show cause, determined the sum of Rs.47,59,109.00 as balance of premia due from the appellant.

The appellate authority-the Central Government-dismissed the appellant's appeal. The legality of the proceedings so culminating in the said appellate order was assailed by the appellant in the Writ Petition before the High Court of Andhra Pradesh, which was rejected. Hence this appeal by special leave.

The contentions pressed by the appellant were (1) that "Distribution and Transmission lines" did not constitute 'Factory' in the concept of 'insurable property' under the 'Act'; (2) that in ascertaining the value of the insurable property, depreciation had had to be granted under the relevant provisions of the Income Tax, Act, 1922; (3) and that the 'Act' was itself a piece of temporary legislation and the notice dated
217
28.11.1968 issued after 10.1.1968 when the legislation had spent itself out by efflux of time was without the authority of law.

Dismissing the appeal, it was
^

HELD: (1) The inhibitions of the limited import of the expression 'factory' do not limit the identity of the 'insurable property' which will have to be ascertained and determined in accordance with the provisions of the 'scheme'. The Act enables the Central Government to declare that provisions of the 'Act' and of the-'scheme' shall apply to assets specified in section 17(1)(d), which include the whole or a specified part of the distribution and transmission system. The 'scheme' prepared and promulgated by notification S.O. 3974 which came into force with effect from 1.1.1963 provides, among other things, that the whole of the "Distribution and Transmission Systems" shall constitute 'insurable property' and that the 'Act' and the 'scheme' shall be applied to them. [220C-H]

(2) The provisions as to depreciation in a taxing law like the Income Tax Act contain elements of incentives and are also informed by considerations of policy of the tax and do not reflect purely economic criteria relevant to the determination of the depreciation. In the instant case, the High Court found that the Electricity (Supply) Act itself provided a formula for working out the allowance of depreciation and the appellant had been adopting that formula for valuation of its properties, assets, etc. There was, therefore, no error in principle in applying the standard of depreciation provided in Electricity (Supply) Act, 1948. [221G; 222D]

(3) Whatever be the principles of construction of temporary-statutes and the effect of the rights and obligations under them after the expiry of the statute

itself, the 'Act' in the instant case contains specific provisions preserving the rights and obligations. For that purpose the 'Act' invokes the provisions of section 6 of the General Clauses Act. The principle behind s. 6 of the General Clauses Act is that all the provisions of Acts would continue in force for purposes of enforcing the liability incurred when the Acts were in force and any investigation, legal proceedings, or remedy, may be instituted, continued or enforced as if the Acts had not expired. [222F-H; 223A-B]

Amadalavalasa Cooperative Agricultural & Industrial Society Ltd. v. Union of India, [1976] 2 SCR 731 at 738, followed.

218

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 881 of From the Judgment and order dated 25.7.1973 of the Andhra Pradesh High Court in Writ Petition No . 3950 of 1971.

K. Raj. Choudhary for the Appellant.

V.C. Mahajan, C.V.S. Rao and R.P. Srivastava for the Respondents.

The Judgment of the Court was delivered by VENKATACHALIAH, J. This appeal, by Special Leave, by the Andhra Pradesh State Electricity Board-a corporation and constituted under The Electricity (Supply) Act, 1948-arises out of the Judgment and order dated, 25.7.1973, of the Andhra Pradesh High Court in Writ Petition No. 3950 of 1971 on its file, rejecting appellant's challenge to certain proceedings for the recovery of insurance premia respecting the appellant's undertaking under the Emergency Risks (Factories) Insurance Act 1962 ('Act') culminating in the appellate-order, dated, 12.5.1971 of the Central Government under Section 11(3) of the Act affirming, in turn, that dated, 15.10.1969 of the Director of Emergency Risks Insurance Schemes determining the balance of the premia payable at Rs.47,59,109.00.

2. The scheme under the Act which came into force on 1.1.1963 lapsed with the termination of the emergency on 10.1.1968. The legislation was to meet the need to provide for expeditious rehabilitation of industrial undertakings in the event of damage in times of war and the Central Government, accordingly, undertook to insure the factories against such war-risks and to indemnify the owners in respect of loss and damage caused by enemy-action, so that, there might be an expeditious industrial rehabilitation so vital in national interests.

Sub-section 3 of the Act envisages the promulgation and effectuation of the Emergency Risks (Factories) Insurance Scheme, mandating a compulsory insurance of factories against war-risks and the payment of premia in terms of and in accordance with the scheme.

3. The Director of the Emergency Risks Insurance Scheme caused a show-cause notice, dated 28.11.1968 to be issued to the appellant calling upon it as to why the balance of premia for the relevant periods should not be fixed at Rs.47,59,109.00 as against a much smaller sum indicated by appellant as its liability in that behalf. The cause shown by the appellant by its representation, dated, 24.1.1969 against the proposed addition not having commended itself to the Director, the latter, by his order dated 15.10.1969 over-ruling objections of the appellant, determined that a sum of Rs.47,59,109.00 was due and recoverable from the appellant by way of balance of premia.

Against this determination, appellant carried-up, under Section 11(3) of the Act, an appeal before the Central Government. The Central Government, after affording an opportunity to the appellant of being heard and on a consideration of the merits, dismissed the appeal by its order dated, 12.5.1971. The legality of the proceedings so culminating in the said appellate-order was assailed in the Writ Petition before the High Court.

4. We have heard Shri K. Rajendra Choudhary, learned counsel for the appellant and Shri V.C. Mahajan, learned senior counsel for the Union of India, respondent in the appeal. The contentions urged by Shri Choudhary in support of the appeal are substantially on the lines of those raised and urged before the High Court. They admit of being formulated thus:

> (a) That the Distribution and Transmission lines cannot be said to fall within the concept of 'Factory' and in quantifying the extent and value of the insurable property, the High Court fell into an error in including the value of the "Distribution and Transmission lines"
>
> (b) That in ascertaining the value of the insurable-property, depreciation had had to be granted under the relevant provisions of the Income-Tax Act 1922 and that the limiting of the depreciation to that under the relevant schedules to The Electricity (Supply) Act 1943 was erroneous.
>
> (c) That the 'Act' was itself a piece of temporary legislation which lapsed on 10.1.1968 and that the proceedings by the Director initiated, as they have come to be, pursuant to show-cause notice dated, 28.11.1968 subsequent to the date of expiry of the statute itself, was without the authority of law.
>
> (d) That substantial portions of the insurable properties came to vest in the Appellant- Board on dates subsequent to 1.11.1963 and that the appellant, in respect of those assets was not liable to premia as appellant had not become the legal-owner of those assets.

We shall now proceed to examine the merits of these contentions seriatim .

5. Re: Contention (a) The argument is that The "Distribution and Transmission Lines" did not constitute 'Factory' and therefore their value was not includible in the concept of 'insurable property' under the 'Act'. The fallacy in this argument lies in that it overlooks the definition of the words

"property insurable under this Act" and also the specific language of Section 17(1) of the Act. The argument also over-looks the express provisions of the statutory 'scheme' put into operation.

Section 2(1) of the 'Act' which defines "property insurable under the Act", inter alia, enables the inclusion of "Such other plant machinery or material as may be specified in the Scheme also."

That apart, Section 17(1) of the 'Act' enables the Central Government, by notification, to declare that provisions of the 'Act' and of the "scheme" promulgated thereunder shall apply to insuring of the various classes of assets specified in clauses (a) to (d) of that section.

Clause (d) of Sub-section (1) of Section 17 refers to: " ....The whole or a specified part of the distribution and transmission systems, sub- stations, switch houses, and transformer houses of electric supply undertakings generally or specified electric undertaking The 'scheme' prepared and promulgated by Notification S.O. 3947 which came into force with effect from 1.1.1963, provides, among other things, that the whole of the "Distribution and Transmission Systems," "sub-stations", "switch houses", "transformer-houses" etc. shall constitute "insurable property" and that the 'Act' and the scheme shall be applied to them.

6. It is, thus, clear that the inhibitions of the limited import of the expression 'Factory' do not limit the identity of the 'insurable-property' which will have to be ascertained and determined in accordance with the provisions of the scheme. The view of the High Court is, in our opinion, fully justified. There is no merit in this contention. Contention (a) is, accordingly, held against the appellant.

7. Re: Contention (b) In determining the value of the insurable property, the scheme, by its clause 7, envisages due allowance for the depreciation being made. The question is whether depreciation allowed in accordance with the schedules to the Electricity (Supply) Act, 1948, in preference to the rates of depreciation provided for in the Indian Income Tax Act, 1922 claimed by the appellant, is incorrect in principle. The High Court noticed that the provisions of the Electricity (Supply) Act, 1948, related to the electricity undertakings themselves and that, further, appellant had itself made-up its books in regard to valuation of various properties, assets etc. adopting the depreciation based on the provisions of the Electricity (Supply) Act, 1948.

The argument of Shri Rajendra Choudhary, learned counsel, is that where two alternative bases for the determination of the depreciation were available, appellant was entitled to opt for the more beneficial and less disadvantageous of the two. There is again a fallacy in this approach. The 'Act' or the 'Scheme' does not specify any bases for the computation of depreciation. It would appear that there were some administrative instructions to the effect that wherever the matter was governed by specific statutory-provisions, those provisions be applied and wherever statutory provisions regulating the matter were not available, then, the provisions of the Income Tax Act be taken into account. These instructions have no statutory force. But even to the extent they go, it was not as if two alternative methods were open. Indeed, the two methods were mutually exclusive and not alternative.

That apart, the provisions as to depreciation in a taxing law like the Income Tax Act contain elements of incentives and are also informed by considerations of policy of the tax and do not reflect purely economic criteria relevant to the determination of the depreciation. The High Court, on the point, held:

> "....When once it is found that the Electricity Board (Supply) Act itself provides a formula for working out the allowance of depreciation and the Electricity Board has been adopting that formula and writing down the allowance of depreciation in its books we fail to see how, if that method is taken into account it can be said to be inconsistent with clause 7 of the Insurance Scheme. Both the Tribunals therefore in our opinion, rightly accepted that as the allowance for depreciation and permitted the same.
>
> The contention that the statutory depreciation should have been disregarded and instead the depreciation worked out under the Income Tax Act should have been made applicable has no force, because no rule or provision of law sustains any such contention ...."

There is no error in principle committed by the High Court in applying the principles contained in the schedules to the Electricity (Supply) Act, 1948. We do not find legal support for the insistence by the appellant on the adoption of the standards of depreciation contained in the provisions of Income Tax Act, 1922. The finding of the High Court in this behalf does not also call for interference. Contention

(b) is also, accordingly, answered against the appellant.

8. Re: Contention (c) The assumption basic to the argument is that the 'Act' is a temporary-statute which expired by efflux of time on 10.1.1968 and that the proceedings subsequently commenced on 29.11.1968 were without jurisdiction. Section 6 of the general clauses Act is held in applicable to a case of expiry of a temporary-statute on the view that Section 6 is attracted wherever there is a repeal and that the case of expiry of a statute by efflux of time is not a case of repeal. Whatever be the principles of construction of temporary-statutes and the effect on the rights and obligations under them of the expiry of the statute itself, the 'Act' in the present case contains specific provisions preserving the rights and obligations. The 'Act' invokes the provisions of Section 6 of the General Clauses Act. The matter is placed beyond controversy by the pronouncement of this court in Amadalavalasa Cooperative Agricultural & Industrial Society Ltd. & Anr. v. Union of India & Anr., (See 1976 2 SCR 731 at 738).

> "....Therefore, if under s. 5 of the 'Factories Act' or under s. 7 of the 'Goods Act', the liability to pay the premia on full insurable value was incurred before the expiry of the Act, s. 6 of the General Clauses Act would enable the ascertainment of the extent of liability for the evaded premia by an officer who was authorised when the Act was in force or by an officer authorised after the expiry of the Act. The principle behind s. 6 of the General Clauses Act is that all the provisions of the Acts would continue in

> force for purposes of enforcing the liability incurred when the Acts were in force and any investigation, legal proceeding, remedy, may be instituted, continued or enforced as if the Acts had not expired .. "

Contention (c) is, accordingly, also held and answered against the appellant.

9. Re: Contention (d) The argument is that though the Appellant-Board was constituted on 1.4.1959, the properties of the erstwhile electricity undertaking of the State Government were transferred to and became the property of the Appellant- Board by notifications issued on various dates subsequent to 1.11.1963 and that, accordingly, during the relevant periods during which the legal ownership of the property did not vest in the appellant, it was not liable for the premia.

It is relevant to mention here that the period for which the demands were raised was between 1.1.1963 and

10. 1.1968. Appellant's contention in this behalf was repelled in the statutory-appeal on the ground that though formally the notifications came to be issued on various dates subsequent to 1.4.1959,- the assets had in fact been transferred to and were acknowledged and treated by the appellant as its own in its Balance-Sheets.

10. Before the authorities, it would appear, this point had not been seriously disputed by the appellant. In a letter dated, 24.1.1969, the Secretary of the Appellant- Board wrote to the Director.

> "....We may mention that we are accepting your stand that the properties transferred to the Board by the Government become the properties of the Board as and from the dates of original transfer ...."
>
> The Director in his order, dated, 15.10.1969 observed:
>
> ".. The assets had in fact been transferred by the State Government to the Board from the 1st April, 1959 and the same had been shown as their own assets by the Board is their balance sheets since then. If for certain reasons the State Government issued the notifications long after the expiry of the two months period i.e., on 5.10.1964, 28.10.1966 and 14.12.1966, etc. it was only a sort of formality, particularly in view of the fact that the said notifications, referred to the assets as having been transferred to the Board as on 1.4.1959. The Board correctly became owner of such assets right from 1.4.1959. This point was conceded by the Board in its letter, dated, 24th January, 1969 and was also not pressed in the discussions that I had with them on the 26th and 27th July, 1969.

(underlining supplied) In view of this nothing survives of contention (d) either. It is accordingly held against the appellant.

13. In the result, for the foregoing reasons, this appeal fails and is dismissed. In the circumstances of the case, the parties are, how ever, left to bear and pay their own costs in the appeal.

R.S.S. Appeal dismissed.