

Supreme Court of India

Air India vs Union Of India And Ors on 18 July, 1995

Equivalent citations: 1996 AIR 666, 1995 SCC (4) 734

Author: B S.P.

Bench: Bharucha S.P. (J)

PETITIONER:

AIR INDIA

Vs.

RESPONDENT:

UNION OF INDIA AND ORS.

DATE OF JUDGMENT 18/07/1995

BENCH:

BHARUCHA S.P. (J)

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BHARUCHA S.P. (J)

AHMADI A.M. (CJ)

CITATION:

1996 AIR 666

1995 SCC (4) 734

JT 1995 (5) 578

1995 SCALE (4) 523

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T BHARUCHA. J.

Special leave granted.

The appeal impugns a judgment of the Delhi High Court. The appellant is Air India.

Air India was established under the Air Corporations Act, 1953. Under the provisions of Section 45 thereof, the Air India Employees Service Regulations 1963, were framed with the consent of the Central Government. The said Regulations governed the terms and conditions of service of Air India's employees. in or about the year 1982 the Deputy Chief Labour Commissioner, Delhi, initiated proceedings against Air India under the provisions of the Industrial Employment (Standing Orders) Act, 1946, for certification of Standing Orders. Air India contended that the Standing Orders Act did not apply to it. The contention was rejected and Standing Orders were certified. Air India's

appeal was rejected. Air India then filed the writ petition upon which the order under appeal was passed. The High Court held that the Standing Orders Act was a special Act and applied to Air India's employees.

The Air Corporations (Transfer of Undertakings & Repeal) Act, 1994 came into force on 29th January 1994. By reason of Section 11 thereof the Air Corporations Act, 1953, stands repealed from that day. Based upon this, Ms. Jaisinh, appearing for Air India's employees, has raised a contention that goes to the root. Air India's case had been that its employees' terms and conditions of service were governed by the said Regulations framed under Section 45 of the Air Corporations Act, 1953: that Act having now been repealed, the said Regulations no longer survived and the sheet-anchor of Air India's bid to avert certification of Standing Orders under the Standing Orders Act disappeared.

... .. India, submitted that the said Regulations were saved by Section 8 of the 1994 Act, which reads thus :

8. Provisions in respect of officers and other employees of corporations - (1) Every officer or other employee of a corporation (except a Director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or a substantial part of the business and affairs of the corporation) serving in its employment immediately before the appointed day shall, in so far as such officer or other employee is employed in connection with the undertaking which has vested in a company by virtue of this Act. become. as from the appointed day, an officer or other employee, as the case may be, of the company in which the undertaking has vested and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, passage, insurance, superannuation scheme, provident fund, other funds, retirement, pension, gratuity and other benefits as he would have held under that corporation if its undertaking had not vested in the company and shall continue to do so an officer or others employee, as the case may be, of the company or until the expiry of a period of six months from the appointed day if such officer or other employee opts not to be the officer or other employee of the company, within such period. (2) Where an officer or other employee of a corporation opts under sub-section (1) not to be in the employment or service of the company in which the undertaking of that corporation has vested. such officer or other employee shall be deemed to have resigned. (3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947) or in any other law for the time being in force, the transfer of the services of any officer or other employee of a corporation to a company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(4) The officers and other employees who have retired before the appointed day from the service of a corporation and are entitled to any benefits, rights or privileges shall be entitled to receive the same benefits, rights or privileges from the company in which

the undertaking of that corporation has vested.

(5) The trusts of the Provident Fund or Pilots Group Insurance and Superannuation Scheme of the corporation and any other bodies created for the welfare of the officers or employees would continue to discharge their function in the company as was being done hitherto in the corporation. Tax exemption granted to Provident Fund or Pilots Group Insurance and Superannuation Scheme would continue to be applied to the company.

(6) Notwithstanding anything contained in this Act or in the companies Act, 1956 (1 of 1956) or in any other law for the time being in force or in the regulations of a corporation. no Director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or a substantial part of the business and affairs of that corporation shall be entitled to any compensation against that corporation or against the company, as the case may be, for the loss of office or for the premature termination of any contract of management entered into by him with that corporation.

In *Watson vs. Winch*, (1916) 1 K.B. 688, Lord Reading, C.J., said :

"It would follow that any by-law made under a repealed statute ceases to have any validity unless the repealing Act contains some provisions preserving the validity of the by-law notwithstanding the repeal."

Sankey, J., concurring, said :

"When a statute is repealed any by-law made thereunder ceases to be operative unless there is a saving clause in the new statute preserving the old by-law. There appear to be two reasons for this Secondly, because the usual practice is to insert in the later statute a section expressly preserving previously made by-law if it is intended that they shall remain in force."

(Emphasis supplied) Bennion on Statutory interpretation, 2nd edition, at pages 494 and 495 states that a "saving is a provision the intention of which is to narrow the effect of the enactment to which it refers so as to preserve some existing legal rule or right from its operation". It adds. "Very often a saving is unnecessary, but is put in *ex abundanti cautela* to quieten doubts". The updated text of the Interpretation Act, 1978, (set out in Bennion's book at page

897) puts into statutory form in Section 15 what is otherwise recognised in law, namely, that the repeal of an enactment does not, unless the contrary intention appears, affect any right or privilege accrued under that enactment. In our view, if subordinate legislation is to survive the repeal of its parent statute, the repealing statute must say so in so many words and by mentioning the title of the subordinate legislation. We do not think that there is room for implying anything in this behalf. Section 8 of the 1994 Act does not in express terms save the said Regulations, nor does it mention

them. Section 8 only protect the remuneration, terms and conditions and rights and privileges of those who were in Air India's employment when the 1994 Act came into force. Such saving is undoubtedly "to quieten doubts" of those Air India employment who were then in service. What is enacted in Section 8 does not cover those employees who joined Air India's service after the 1994 Act came into force. The limited saving enacted in Section 8 does not, in our opinion, extend to the said Regulations. Holding as we do that the said Regulations ceased to be effective on 29th January, 1994, the very foundation of Air India's case no longer exists. No consideration of other arguments is therefore, necessary. The appeal, accordingly, fails and is dismissed with costs.