

Andhra High Court

Virgo Conductors Pvt. Ltd. Rep. By ... vs A.P. Transmission Corporation ... on 20 December, 2007

Equivalent citations: AIR 2008 AP 123, 2008 (2) ALT 248

Author: G Seethapathy

Bench: B P Rao, G Seethapathy

ORDER G.V. Seethapathy, J.

1. These civil revision petitions are filed seeking to assail the order dated 08-06-2007 in I.A. No. 121 of 2007 in O.P. No. 1630 of 2003 and batch, on the file of the XIV Additional Chief Judge, Fast Track Court, City Civil Court, Hyderabad, wherein the said petitions filed by the petitioners herein under Order XIV Rule 2 C.P.C., read with Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006, (Central Act 27 of 2006)(for short 'the New Act'), praying to decide the preliminary objection regarding the maintainability of the original petitions without deposit of 75% of the awarded amount, were dismissed.
2. As this batch of civil revision petitions involve common questions of fact and law and have arisen out of the impugned common order, they are heard together and being disposed of by this common order.
3. The petitioners herein entered into certain contracts with the first respondent for supply of conductors, cables/wires of varying quantities under various purchase orders. The petitioners filed a claim statement before the second respondent-A.P. Industry Facilitation Council for payment of amounts outstanding, with interest. Awards were passed in favour of the petitioners. The first respondent filed original petitions under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act') challenging the said awards passed by the second respondent in favour of the petitioners. The petitioners filed batch of applications seeking a direction to the first respondent to deposit 3/4th of the amount awarded, before the original petitions can be entertained. The said petitions were dismissed. The petitioners filed C.R.P. No. 1815 of 2005 and batch before this Court and they were also dismissed. The S.L.Ps preferred by the petitioners before the Supreme Court are stated to be pending. While so, the petitioners filed fresh applications in I.A. No. 121 of 2007 and batch subsequent to coming into force of the New Act, repealing the earlier Act i.e., the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, (Act 33 of 1993) (for short 'the Old Act'). The said batch of fresh applications were also dismissed by the learned Additional Chief Judge, by the impugned common order dated 08-06-2007, holding that the first respondent can continue to have the benefit accrued under the Old Act and need not deposit 75% of the amount awarded, as required under the New Act for the maintainability of the original petitions. Aggrieved by the same, the present batch of civil revision petitions is filed.
4. Arguments of the learned Counsel for the petitioner and the learned standing Counsel for the respondents are heard. Records are perused.

5. The main contention of the petitioners is that Section 19 of the New Act imposes a bar on the maintainability of the petitions for setting aside the award unless the applicant has deposited 75% of the amount awarded and in the absence of such deposit, the petitions are not maintainable.

6. The learned Counsel for the petitioners would contend that the object of the New Act is to confer a privilege on the small-scale industry for the default in payment of money due to it and the presence of the New Act is to be construed in such a manner as to achieve the desired objective.

7. The learned Counsel for the first respondent, on the other hand, would contend that by virtue of Section 32(2) of the New Act, notwithstanding the repeal under Sub-section (1) of Section 32 of the Old Act, nothing contained or any action taken under the Act so repealed, shall be deemed to have been done or taken under the corresponding provisions of the New Act and, therefore, the petitions which were validly instituted under the provisions of the Old Act, shall be deemed to have been duly instituted under the corresponding provisions in Section 19 of the New Act as well. She would further contend that the valuable right which is accrued to the first respondent under the provisions of the Old Act, which provisions did not stipulate deposit of 3/4th of the awarded amount for filing the petitions, cannot be taken away by invoking the provisions of the New Act, which came into force subsequent to filing of and during the pendency of the original petitions.

8. In view of the rival contentions of the parties, the question which arises for consideration is whether the first respondent is liable to deposit 3/4th of the awarded amount for the maintainability of the original petitions filed for setting aside the awards, in view of Section 19 of the New Act, notwithstanding that there was no similar requirement of deposit under the provisions of the Old Act whereunder the original petitions were filed.

9. The awards were passed on 16-11-2002. The original petitions were filed under Section 34 of the Arbitration Act in the year 2003, for setting aside the awards. By then, the Old Act was in operation. Under Section 6 of the Old Act, the supplier can recover the amount by way of a suit or other proceeding. Sub-section (2) of Section 6 states that any party to a dispute may make a reference to the Industry Facilitation Council, the second respondent herein, for acting as an arbitrator or conciliator in respect of matters referred to in Sub-section (1) and the provisions of the Arbitration Act shall apply to such disputes as the arbitration or conciliation was pursuant to arbitration agreement. Section 7 of the Old Act states that no appeal against any decree, award or other order shall be entertained by any court or other authority unless the appellant has deposited with it 75% of the amount in terms of the decree, award, or as the case may be, other order. Section 6(1), as it originally stood, contemplated filing of suit or other proceeding for recovery of the amounts due. Subsequently, by way of an amendment through Amending Act 23 of 1998 w.e.f. 10-08-1998 Sub-section (2) was incorporated by re-numbering the original Section 6 as Sub-section (1). Subsequent to the amendment w.e.f., 10-08-1998, Section 6 reads as follows:

Recovery of amount due:

(1) The amount due from a buyer, together with the amount of interest calculated in accordance with the provisions of Sections 4 and 5, shall be recoverable by the supplier from the buyer by way of a

suit or other proceeding under any law for the time being in force.

(2) Notwithstanding anything contained in Sub-section (1), any party to a dispute may make a reference to the Industry Facilitation Council for acting as an arbitrator or conciliator in respect of the matters referred to in that Sub-section and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such disputes as the Arbitration or conciliation were pursuant to an arbitration agreement referred to in Sub-section (1) of Section 7 of that Act.

By virtue of Sub-section (2) of Section 6, when a reference is made to the second respondent-Industry Facilitation Council for acting as an arbitrator, the provisions of the Arbitration Act are made applicable to such disputes. When an award was passed by the second respondent, the first respondent was, therefore, entitled to question the said award by filing the original petition under the provisions of the Arbitration Act, by virtue of Sub-section (2) of Section 6 of the Old Act. Admittedly, the provisions of the Arbitration Act do not require deposit of any portion of the amount awarded for maintainability of the original petition. It is significant to note that Section 7 of the Old Act, which prohibits filing of an appeal against the decree or other order without deposit of 75% of the amount awarded, is not suitably amended while incorporating Sub-section (2) in Section 6 through the Amendment Act 23 of 1998. Section 7 of the Old Act, which remains unamended runs as follows:

Appeal- No appeal against any decree, award or other order shall be entertained by any court or other authority unless the appellant (not being a supplier) has deposited with it seventy-five per cent of the amount in terms of the decree, award or as the case may be, other order in the manner directed by such court or, as the case may be, such authority.

Section 7 contemplates filing of only 'appeal' against any decree, award or other order, but not any other proceeding like original petition. Section 7 casts a liability only on the 'appellant' to deposit 3/4th of the amount awarded while filing the appeal. There is no prohibition contained in Section 7 of the Old Act with regard to filing of an original petition challenging the award under the provisions of the Arbitration Act without deposit of 3/4th of the awarded amount. On the other hand, filing of such original petition without deposit of any portion of the awarded amount is permissible under the provisions of the Arbitration Act, which provisions are made applicable by virtue of Sub-section (2) of Section 6 of the Old Act. The earlier batch of petitions filed by the petitioners seeking a direction to the first respondent for deposit of the 75% of the awarded amount were accordingly dismissed by the learned Additional Chief Judge and the same was confirmed by this Court also while dismissing the civil revision petitions filed in that regard.

10. While the original petitions are thus pending, the Old Act was repealed and a new Act was enacted which came into force w.e.f., 16-06-2006. Section 18 of the New Act contemplates reference to the Facilitation Council any dispute with regard to any amount due under Section 17. Sub-section (2) of Section 18 enables the Council to conduct the conciliation by itself or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or center, for conducting conciliation and the provisions of Sections 65 to 81 of the Arbitration Act are made applicable to such a dispute as if the conciliation was initiated under

Part III of that Act. Sub-section (3) of Section 18 states that where the conciliation initiated under Sub-section (2) is not successful, then the Council shall either take up the dispute on itself for arbitration or refer it to any institution or centre providing alternate disputes resolution services for such arbitration and the provisions of the Arbitration Act shall apply as if the arbitration was in pursuance of an arbitration agreement referred to in Sub-section (1) of Section 7 of that Act. Section 19 of the New Act, which provides for challenging the decree, award or other order also by the Council itself or any other institution or centre, runs as follows:

Application for setting aside decree, award or order No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate disputes resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five percent of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.

A careful scrutiny of the above provisions would reveal that an attempt is made to fill the lacuna, which was existing in the corresponding provisions in Section 7 of the Old Act which remained un-amended in spite of amendment of Section 6 of the Old Act. While Section 7 of the Old Act employed the words 'appeal' and 'appellant' thereby contemplating filing of only appeal against the decree, award or other order and requiring deposit of 75% of the awarded amount while filing the appeal, Section 19 of the New Act employs the expression 'application' which takes within its fold even the original application filed for setting aside the award. Thus, while filing the application under Section 19 of the New Act for setting aside the award, it is mandatory on the part of the applicant to deposit 75% of the awarded amount. Section 24 of the New Act states that provisions of Sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. By virtue of the overriding effect contained in Section 24 of the New Act, for the provisions of Section 19, deposit of 75% of the awarded amount for the maintainability of the application filed for setting aside the award is mandatory though the provisions of the Arbitration Act do not contemplate any such deposit inasmuch as Section 19 of the New Act would have an overriding effect over the provisions of the Arbitration Act. It is not disputed that the New Act is prospective in operation, but is not retrospective. The requirement for deposit of 75% of the awarded amount contemplated under Section 19 of the New Act is, therefore, applicable only for the applications, which are filed questioning the awards subsequent to coming into force of the New Act on 16-06-2006. The original applications on hand were filed in 2003 under the provisions of the then existing Old Act.

11. When the Old Act was repealed under Sub-section (1) of Section 32 of the New Act, it is stated in Sub-section (2) that notwithstanding such repeal, anything contained or any action taken under the Act so repealed, shall be deemed to have been done or taken under the corresponding provisions of

the New Act. By virtue of the said validating Clause contained in Sub-section (2) of Section 32, filing of the original petitions under Section 34 of the Arbitration Act, which Act was made applicable under Sub-section (2) of Section 6 of the Old Act, must be deemed to have been done or taken under the corresponding provisions of the New Act. Section 19 of the New Act corresponds to Section 7 of the Old Act only to a limited extent in the sense that both of them contained a bar against challenge to the award in the absence of deposit of 75% of the awarded amount. Section 19 of the New Act, however, contemplates an application for setting aside the award, whereas Section 7 of the Old Act contemplates only an appeal. Filing of an application for setting aside the award is contemplated under the Old Act only under the provisions of Arbitration Act, which provisions are made applicable under Sub-section (2) of Section 6 wherein there was no requirement for making deposit of 75% of the awarded amount. Thus, in a sense, filing of an application for setting aside the award and the bar against maintainability of such application without depositing 75% of the awarded amount is a new feature incorporated under Section 19 of the New Act, which has no corresponding provision under the Old Act. Such new provision which is incorporated for the first time under the New Act can only have the prospective operation w.e.f., 16-06-2006, the date on which the said provision has come into force, inasmuch as the Act does not contain any specific provision to the effect that its operation is retrospective. Sub-section (2) of Section 1 of the Act states that the Act shall come into force on such date the Central Governmental may by notification appoint. It is not disputed that the Act came into force w.e.f., 16-06-2006. Deposit of 75% of the awarded amount cannot, therefore, be insisted in respect of matters which are already filed under the provisions of the Old Act and pending by the date of commencement of the New Act.

12. Even otherwise assuming that Section 19 of the New Act corresponds to Section 7 of the Old Act, still by virtue of Sub-section (2) of Section 32 of the New Act, filing of the applications without deposit, which was permissible under Section 6(2) of the Old Act coupled with the Arbitration Act shall be deemed to have been a thing done or action taken under the provisions of Section 19 of the New Act. If the requirement of deposit of the 3/4th amount awarded which is newly incorporated in Section 19 of the New Act is to be insisted in respect of the proceedings pending by the date of commencement of the New Act, then the validation Clause by virtue of the deeming provision contained in Sub-section (2) of Section 32 becomes otiose. Section 6(c) of the General Clauses Act states that unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incorporated under any enactment so repealed.

13. In Halsbury's Law of England, 4th Edn., the word 'repeal' has been defined as under:

To repeal an Act is to cause it to cease to be a part of the corpus juris or body of law. To repeal an enactment contained in an Act is to cause it to cease to be in law a part of the Act containing it. The general principle is that, except as to transactions past and closed, an Act or enactment, which is repealed is to be treated thereafter as if it had never existed. However, the operation of the principle is subject to any savings made, expressly or by implication, by the repealing enactment, and in most cases it is subject also to the general statutory provisions as to the effects of repeal.

14. In the present case, apart from the saving Clause contained in Sub-section (2) of Section 32, Clause (c) of Section 6 of the General Clauses Act also saves the right or privilege already acquired

under the repealed Act. The first respondent has acquired a right or privilege to file the original application without depositing 3/4th of the awarded amount under the provisions of the repealed Act coupled with the Arbitration Act. Such accrued right or privilege cannot be taken away by invoking the new provision incorporated in Section 19 of the New Act.

15. In *C.I.T v. Shah Sadiq and Sons*, the Apex Court held as follows:

A right which had accrued and had become vested, continued to be capable of being enforced notwithstanding the repeal of the statute under which that right accrued unless the repealing statute took away such right expressly or by necessary implication. This is the effect of Section 6 of the General Clauses Act, 1897.

16. In *Gurcharan Singh Baldev Singh v. Yashwant Singh*, the Apex Court observed as follows:

The objective of Section 6(c) of the General Clauses Act, 1897 is to ensure protection of any right or privilege acquired under the repealed Act. The only exception to it is legislative intention to the contrary. That it, the repealing Act may expressly provide or it may impliedly provide against continuance of such right, obligation or liability.

17. G.P. Singh in his book on Principles of Statutory Interpretation, 2006 Edn., enumerated the effect of Clauses (c) to (e) of Section 6 of the General Clauses Act, namely, is to prevent the obliteration of a statute in spite of its repeal to keep intact rights acquired or accrued and liabilities incurred during its operation and permit continuance or institution of any legal proceedings or recourse to any remedy which may have been available before the repeal for enforcement of such rights and liabilities.

18. In *Gammon India Limited v. Special Chief Secretary and Ors.*, the Supreme Court after referring to a catena of decisions and authoritative texts on the subject, held as follows:

On critical analysis and scrutiny of all relevant cases and opinions of learned authors, the conclusion becomes inescapable that whenever there is a repeal of an enactment and simultaneous re-enactment, the re-enactment is to be considered as reaffirmation of the old law and provisions of the repealed Act which are thus re-enacted continue in force uninterruptedly unless the re-enacted enactment manifests an intention incompatible with or contrary to the provisions of the repealed Act. Such incompatibility will have to be ascertained from a consideration of the relevant provisions of the re-enacted enactment and the mere absence of the saving Clause is, by itself, not material for consideration of all the relevant provisions of the new enactment. In other words, a clear legislative intention of the re-enacted enactment has to be inferred and gathered whether it intended to preserve all the rights and liabilities of a repealed statute intact or modify or to obliterate them altogether.

In the above case, the Apex Court was considering the question as to the jurisdiction of the Assistant Commissioner of Commercial Taxes, Warangal Division, Andhra Pradesh, in initiating and completing the penalty proceedings under the Andhra Pradesh General Sales Tax Act, 1957, after its

repeal.

19. Section 80(3) of the A.P. VAT Act provided for application of Section 8 of the A.P. General Clauses Act, 1891 on the repeal of A.P.G.S.T Act, 1957. Section 8 of the A.P. General Clauses Act, 1891 was akin to Section 6 of the General Clauses Act, which deals with effect of repeal. The Apex Court observed that even in the absence of a provision similar to Section 80(3) of the A.P. VAT Act, Section 8 of the APGST Act which is analogous to Section 6 of the General Clauses Act, is not confined to mere repeal of a statute but extends to a repeal followed by fresh legislation, unless a different intention appears from the new enactment and that is for the Court to enquire whether the fresh legislation had preserved the rights and liabilities created under the old statute or whether their intendment was to obliterate them. A scrutiny of the provisions of the New Act does not indicate any intention on the part of the legislature to obliterate the rights or privileges that have already acquired to the parties under the provisions of the Old Act. On the other hand, Section 32(2) specifically saves anything done or any action taken under the repealed Act by deeming that such thing or action shall be deemed to have been done or taken under the corresponding provisions of the New Act. It is to be noted that under Section 19 of the New Act, the scope of the similar provision contained in Section 7 of the Old Act is enlarged by bringing into its fold even an application filed for setting aside the award and requiring deposit of 3/4th of the awarded amount for the maintainability of such application. Section 19 of the New Act does not, therefore, obliterate any right or privilege already acquired by the parties under the Old Act, but only seeks to fill the lacuna existing under the Old Act in respect of an application filed for setting aside the award by extending the bar of maintainability in the absence of deposit of 3/4th of the amount awarded to such applications as well. From the said provision, which is in the nature of a modification or improvement over the earlier similar provision contained in Section 7 of the Old Act, it cannot be inferred that the legislature has intended to obliterate the rights or privileges already acquired under the provisions of the old Act. Such modification or improvement made in Section 19 of the New Act can only be prospective in its operation and the bar contained therein regarding maintainability cannot be extended retrospectively to the applications, which are duly and validly filed under the provisions of the Old Act.

20. In the circumstances, the contention of the petitioners that by virtue of enactment of the New Act repealing the Old Act during the pendency of the original petitions, the first respondent herein shall be required to deposit 3/4th of the amount awarded under Section 19 of the New Act, is untenable.

21. The impugned order dated 08-06-2007 of the learned IV Additional Chief Judge, Fast Track Court, City Civil Court, Hayderabad, dismissing the said applications does not, therefore, call for any interference by this Court.

In the result, the Civil Revision Petitions are dismissed.