THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE T.RAJANI

Writ Appeal No.936 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred by the 4th respondent-cooperative society in W.P.No.21488 of 2017 aggrieved by the *ad* interim order passed by the Learned Single Judge in W.P.M.P.No.26412 of 2017 in W.P.No.21488 of 2017 dated 30.06.2017. Respondents 1 to 3 herein are employees of the appellant-cooperative society. They invoked the jurisdiction of this Court contending that, in terms of the amendment to Bye-law No.21(2)(b) of the appellant-society, the age of superannuation of its workmen was enhanced to 60 years with effect from 10.11.1992; the appellant-cooperative society is governed by the provisions of the Industrial Employment (Standing Orders) Act, 1946 (hereinafter called the "Act"); in the light of the judgment of the Supreme Court, in ***The U.P.State Electricity Board vs. Hari Shankar Jain[1]***, the provisions of the Act would prevail over any other statutory provisions to the contrary; amendment to the Bye-laws of the society, with effect from 10.11.1992, must be treated as forming part of the Standing Orders of the appellant-cooperative society; and the respondent-writ petitioners are, therefore, entitled to be continued in service till they attain the age of superannuation of 60 years.

In the order under appeal, the Learned Single Judge observed that, having regard to the standing orders amended to bye-law 21(2)(b) of the appellant-society, and having regard to the judgment of the Supreme Court in ***Hari Shankar Jain[1],*** there shall be interim direction as prayed for, which is to continue the respondent-writ petitioners in service till they attain the age of superannuation of 60 years.

[1] (1978) 4 Supreme Court Cases 16

Sri P.V.Ramana, learned counsel appearing on behalf of the appellant-society, would submit that the effect of the interim order is to allow the writ petition itself; three other writ petitions, i.e W.P.Nos.21147, 21155 and 21557 of 2016 seeking the same relief, are still pending on the file of this Court without any interim order being passed therein; Order 24(1) of the Standing Orders of the appellant-society stipulates that a workman shall be required to vacate his employment on reaching the age of superannuation to be notified by the employer provided that the employer may re-employ the superannuated workman if there are sufficient and cogent reasons to do so; no such date of superannuation has been notified by the employer; Rule 28(6) of the A.P. Cooperative Societies Rules, 1964 requires every employer, other than those working in the last grade service, to be retired on attaining the age of superannuation of 58 years; and, in the light of the law declared by the Full Bench of this Court in ***Etikoppakka Co-operative Agricultural and Industrial Society Ltd. Vs. K.Sanyasi***[2], the appellant-cooperative society had rightly retired the respondent-writ petitioners on their attaining the age of superannuation of 58 years.

On the other hand Sri Vedula Srinivas, learned counsel for the respondent-writ petitioners, would submit that Order 24 of the Standing Orders of the appellant-cooperative only requires the date of superannuation to be notified; the manner in which it is to be notified is not specified therein; any form of notification, even if it be by way of an amendment to the bye-laws of the society, must be construed as a notification in terms of Order 24(1) of the Standing Orders of the appellant-society; in the light of the judgment of the Supreme Court in ***Hari Shankar Jain***[1], Order 24(1) of the Standing Orders of the appellant-cooperative society would prevail notwithstanding anything to the contrary in Rule 28(5) of the A.P. Cooperative Societies Rules; consequently, the Learned Single Judge was justified in passing the *ad*

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[2] 2004(6) ALT 288 (F.B.)

interim order; and this Court would, ordinarily, not entertain an appeal, under Clause 15 of the Letters Patent, against an *ad* interim order, as it does not constitute a judgment within the meaning of Clause 15 of the Letters patent.

On the question of maintainability of an appeal, under Clause 15 of the Letters Patent, it is relevant to note that, in **Bharat Cooking Coal Limited v. Dev PL(JV), Dhanbad**[3], the challenge before the Division Bench of the Jharkhand High Court was to an interim order passed by the Learned Single Judge granting status quo. On an objection being raised to the maintainability of the appeal, the Division Bench of the Jharkhand High Court, relying on the judgment of the Supreme Court in **Midnapore Peoples Co-op. Bank Limited v. Chunilal Nanda**[4], held that it is only against routine orders or orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties, that a Letters Patent Appeal is not maintainable; and the interlocutory order under appeal, which caused gross injustice to a party, and which deprived him of a valuable right, should be treated as a judgment within the meaning of the Letters Patent.

In **Union of India v. Government of Tamilnadu**[5], the question which arose for consideration before the Division bench of the Madras High Court was whether an appeal, under Clause 15 of the Letters Patent, would lie against an interim order of injunction passed by the learned Single Judge. Relying on the judgment of the Supreme Court in **Shah Babulal Khimji v. Jayaben D.Kania**[6], the Division bench of Madras High Court observed:

> ".....In reply, the learned Advocate General submitted that the policy decision taken by the Central Government can be challenged if it is in violation of the provisions of the Constitution, statutory enactment and against public interest or does not sub-serve the public interest. He further submitted that under the dual pricing policy, there is no restriction imposed on any of the bulk consumers to get high speed

[3] 2014 Indlaw JHKD 294
[4] (2006) 5 SCC 399
[5] 2013 Indlaw MAD 832
[6] AIR 1981 SC 1786

> diesel from the retail outlets operated by the petro dealers, and the effect of the impugned order passed by the learned single Judge is only to provide a single place for the supply of high speed diesel required for operating the buses. According to the learned Advocate General, if the impugned order had not been passed, the buses of the State Transport Undertakings would have to go to the retail outlets for getting their tanks filled up, for which the State would have paid only concessional rate payable to high speed diesel, as there is no such prohibition in the policy. Thus, neither the Union of India nor the oil marketing companies are suffering any losses on account of the interim injunction granted by the learned single Judge. **He further submitted that the interim injunction was granted only till 12th April, 2013, and before the learned single Judge, learned standing counsel appearing for the Union of India did not raise any such plea, as has been raised in the present appeal. It is always open to the Union of India to move an application for vacating the exparte order of interim injunction passed by the learned single Judge, and all the pleas raised herein by the appellant shall be considered by the learned single Judge at the time of passing final orders on the application filed for grant of interim relief or finally deciding the main writ petition.** He further submitted that it is the usual practice of this Court not to assign any reasons while granting interim relief by passing an order of interim injunction at the initial stage, which practice has been followed by the learned single Judge in this case also. According to him, after exchange of affidavits, this Court considers all the pleas raised by the respective parties while passing order on the miscellaneous application, and therefore, the impugned order passed by the learned single Judge does not call for any interference.
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> **Mr.M.Ravindran, learned senior counsel appearing for the Oil Marketing Companies, submitted that the learned single Judge ought not to have granted an order of temporary injunction where a policy decision is under challenge.** The effect of grant of temporary injunction has a cascading effect and the oil marketing companies are put to loss of approximately Rs.424 crores daily, as other bulk consumers have also approached the other High Courts for grant of interim injunction. He has relied upon a decision of the Hon'ble Supreme Court in Bhavesh D.Parish vs. Union of India reported in 2000 (5) SCC 471.
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> **In the present case, the interim order passed by the learned single Judge, though does not finally decide a issue, but materially and directly affects the appellant, as the Oil Marketing Companies, which supply diesel to the first respondent herein, would be required to supply diesel at the rate at which they are supplying to the retail consumers thereby causing daily loss to the Oil Marketing Companies running into several crores of rupees, and thus burdening the appellant in grant of subsidy. The view, which we are taking, is in lines with the principles laid down by the Hon'ble Supreme Court in Shah Babulal Khimji vs. Jayaben D.Kania and another (supra) (which has been followed by the Hon'ble Supreme Court in the case of Midnapore Peoples↕ Coop.Bank Ltd., (supra), wherein the Hon'ble Supreme Court, while considering the scope of Clause 15 of the Letters Patent had held that every interlocutory order cannot be regarded as a judgment, but only those orders would be judgments, which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned**.
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> **Thus, the appeal preferred under Clause 15 of the Letters Patent by the appellant is maintainable**....." (emphasis supplied)

The law laid down in the aforesaid judgments of the Jharkhand and Madras High Courts, following the judgment of the Supreme Court, is that, even where the interim order passed by the learned Single Judge does not finally decide an issue, but materially and directly affects the appellant, it can be regarded as a judgment under Clause 15 of the

Letters Patent as it affects the vital and valuable rights of the parties and causes serious injustice to them.

The effect of the ad-interim order of the Learned Single Judge is that the appellant-society is now required to continue the respondent-writ petitioners in service beyond the age of 58 years upto the age of 60 years. They would, consequently, be required to pay the respondent-writ petitioners their salary, each month for the next two years. This would add to the financial burden of the appellant which has already suffered huge losses. The order under appeal materially and directly affects the appellant, and causes them serious injustice. We see no reason therefore to non-suit the appellant on this ground.

A Full Bench of this Court in ***Etikoppakka Co-operative Agricultural and Industrial Society Ltd.***[2] held:

> "….The third contention is that the petitioners are workmen within the meaning of Industrial Disputes Act, therefore they have to be treated as such. This argument is without any basis because Rule 28(5)(1) of the Act does not make any distinction between workmen and non-workmen. It creates a distinction between Last Grade Servants and other paid Servant-Officer of the Society Admittedly the petitioners are not in the Last Grade Service. The Rule has been made notwithstanding anything contained in the bye-laws, special bye-laws, service regulations or common cadre regulations of the Co-operative Societies. Therefore, the Rule applies to the petitioners with its full force and they have to retire at the age of 58 years……"

The question whether amendment to the Bye-laws of the appellant-cooperative society on 10.11.1992 should be read as a notification under Order 24(1) of the Standing Orders of the appellant-society; whether any dispute, regarding the interpretation to be placed on the scope of Order 24 of the Standing Orders, should be raised before the Labour Court/Industrial Tribunal in view of Section 13-A of the Industrial Employment Standing Orders Act, 1946; whether Rule 28(5) of the A.P. Cooperative Societies Rules, 1964, which prescribes the age of superannuation of 58 years, should be held to have superceded the amendment to the Bye-laws of the appellant-cooperative society on 10.11.1992, are all matters which are required to be examined in the writ petition.

While it is no doubt true that the Supreme Court, in ***Hari Shankar Jain***[1], has held that the Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 would prevail over any other statutory provision to the contrary, the question, as noted hereinabove, is whether amendment to bye-law 21(2)(B) by the appellant-cooperative society on 10.11.1992 can be construed as a notification in terms of Order 24(1) of the Standing Orders of the appellant-cooperative society.

The relief sought for in the main writ petition is to declare the action of the appellant-cooperative society, in retiring the respondent-writ petitioners at the age of 58 years, as arbitrary and illegal; and to consequently direct them to be continued in service till the age of 60 years. The ad-interim order passed by the Learned Single Judge has the effect of allowing the main writ petition itself at the stage of admission. While such an order can be passed in exceptional circumstances, we are satisfied that the present case is not one such, more so as it is stated that three other writ petitions, wherein a similar claim for enhancement of the age of superannuation to 60 years was made, are still pending on the file of this Court, and no interim orders have been passed therein.

While the appellant-cooperative society would, no doubt, suffer substantial prejudice as a result of the *ad* interim order, as it would require the respondent-writ petitioners to be continued in service till they attain the age of 60 years, without any adjudication of their entitlement to be continued as such, the interests of the respondent-writ petitioners would be adequately safeguarded if it is made clear that, in the event the writ petition is allowed later, they would be entitled to claim their salary and emoluments for the period of two years i.e., between the age of 58 to 60 years.

We are satisfied that the *ad* interim order, passed by the Learned Single Judge, necessitates interference. The order under appeal is, accordingly, set aside. W.P.No.21488 of 2007 shall stand admitted, and is posted along with W.P.Nos.21147, 21155 and 21557 of 2016.

The Writ Appeal is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

13th July, 2017
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AND

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Date: 13.07.2017

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