

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1.)

CWP-24778-2015
Date of Decision:-06.09.2019.

Gurdaspur Cooperative Sugar Mills Ltd., Gurdaspur

.....Petitioner

Versus

Food Corporation of India and others

.....Respondents

(2.)

CWP-2698-2016

Zira Cooperative Sugar Mills Ltd., Gurdaspur

.....Petitioner

Versus

Food Corporation of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vikas Singh, Advocate for the petitioner

Mr. K.K. Gupta, Advocate and
Mr. Vaibhav Gupta, Advocate,
for the respondents

RAJIV NARAIN RAINA, J. (Oral)

1. This order disposes of the above mentioned two writ petitions as the point involved in these petitions is common.

2. Heard Mr. Vikas Singh and Mr. K.K. Gupta, Advocates, learned counsel for the parties.

3. As an aftermath of the decision of this Court in CWP-2241-1987 dated 05.07.2011 the position obtaining is that the petitioner-Sugar

amount of Rs.345.50P for the same weight. The Central Government pronounced the reserved price for levy sugar for the crop season 1981-82 as Rs.345.50P per quintal. In pursuance to the amendment order dated 20.12.1985 it was raised to Rs.415.37. The Mills had to be paid by the Food Corporation of India according to this rate from the date of the amended order but with reference to the crop season 1980-81, the petitioner Sugar Mills supplied the processed levy sugar to the Central Pool through the FCI from 1980-81 onwards. Thereafter, in pursuance to the decision of the Delhi High Court as affirmed by the Supreme Court, the Court held that the Punjab Zone has to be put in Schedule 6 instead of Schedule 5 of the Price Determination Order dated 13.11.1980. Thereafter, the Central Government issued the amendment order, namely, Sugar (Price Determination for 1980-81 Production) Amendment Order, 1985 issued on 20.12.1985 with immediate effect. The petitioner then filed writ petition claiming the revised rate in terms of the above decision of the Delhi High Court which had been affirmed by the Supreme Court between third parties claiming common relief. The writ petition was allowed with the following order:-

“3. The nature of outcome of the case before the Supreme Court is not apprised to this Court by the Union. If the amending Act validates the decision relating to price passed by Union Government, it should be understood that it would apply also to the price which was notified through amendment notification which was issued on 27.12.1985 (Annexure P-1) filed along with the writ petition. The higher price itself was not a price determination by the High Court but it is a price determined by the government pursuant to a direction from the Delhi High Court. This redetermination of price, in my view, must be taken as validated through the

amending Act and the liability of the State shall be to effectuate through its functionality namely Department of Food and Supply the price as determined and become liable to the petitioners, the difference in price of what was originally fixed at 345.29 per quintal to the price as redetermined through the notification issued on 27.12.1985 namely at 415.37. The differential rate shall be worked out for the quantity of supply and paid within eight weeks from the date of receipt of copy of this order along with interest at 9% from the date when it fell due till the date of payment.

4. The writ petition is allowed on the above terms.”

4. The point which has to be noted for the purposes of this Court is that the enhanced reserved price of Rs.415.37 is to be given from the date of submission of bills or from the date of amendment with the two dates distant apart but making a huge difference. The entire amount was paid by the Food Corporation of India to the petitioner with interest from the date of amendment in the year 1985.

5. The petitioner then filed contempt petition in CWP No.2241 of 1987 contending that the Food Corporation of India had committed contempt by refusing to pay interest from the date of submission of bills i.e. 1980-81 onwards. The contempt petition was taken up and disposed of with a direction to the respondents to decide their representation regarding interest. The representation has been decided by the Food Corporation of India vide Annex P-9 and the Government of India vide Annex P-10 wherein it was decided that the interest is to be paid from the date of amendment and not from the date of submission of bills. These orders have been challenged in the present writ petition limited to the question of grant

Court had asked Mr. Vikas Singh, Advocate to apprise the Court about the Notification dated 20.12.1985 as to whether it was prospective or retrospective in nature. The petitioner preferred an application placing the Notification dated 20.12.1985 on record at Annex P-11.

6. On reading the Notification it is apparently silent on as to prospective or retrospective operation. To construe this silence it is well settled in law to hold that if a Notification is silent as to when it comes into force, then it is always to be read prospective in nature and, therefore, going by this reasoning nothing remains due to be paid to the petitioner in the principal amount or interest, as interest has admittedly been paid to the petitioner from the date of the Notification with arrears up to date. It is also well settled that interest runs from the date when rights are settled between the parties and are no longer inchoate.

7. Mr. K.K. Gupta, Advocate appearing for the Food Corporation places reliance on the following Supreme Court judgments on the point of prospectivity to be attached to the rise in price and its date of applicability:-

(I) **District Collector, Vellore District Vs. K. Govindaraj**

[(2016) 4 SCC 763]. Para 13 reads as under:-

“13. ... though the Legislature has plenary powers of legislation within the fields assigned to it and can legislate prospectively or retrospectively, the general rule is that in the absence of the enactment specifically mentioning that the concerned legislation or legislative amendment is retrospectively made, the same is to be treated as prospective in nature. It would be more so when the statute is dealing with substantive rights. No doubt, in contrast of statute dealing with substantive rights, wherever a statute deals with merely a matter of procedure, such a statute/amendment in the statute is presumed to be retrospective unless such a construction is

*textually inadmissible. At the same time, it is to be borne in mind that a particular provision in a procedural state may be substantive in nature and such a provision cannot be given retrospective effect. To put it otherwise, the classification of a statute, either substantive or procedural, does not necessarily determine whether it may have a retrospective operation. In **Maxwell V. Murphy, (1957) 96 CLR 261** Dixon C.J. Formulated the aforesaid procedure in the following words:*

“The general rule of common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to the post events. But given rights and liabilities fixed by reference to the post facts, matters or events, the law appointing or regulating the manner in which they are to be enforced or their enjoyment is to be secured by judicial remedy is not within the application of such a presumption.”

(II) **Anil Chandra and others Vs. Radha Krishna Gaur and**

others [(2009) 9 SCC 454] though in the context of service law but relevant for the enunciation of the principle. Para 20 reads as under:-

“20. The rules pertaining to the reservation and promotion list is prospective in nature and thereby cannot disturb the promotion list of the appellants by virtue of this rule further, if a rule/notification/circular claims to be retrospective in nature, has to expressly specify, as per the rules of interpretation of statutes in the instant petition, the appellants have failed to establish the nature with regard to retrospective effect of the notification/rules.”

(III) **MRF Ltd., Kottayam Vs. Assistant Commissioner**

(Assessment) Sales Tax and others [(2006) 8 SCC 702]. Para 28 and 29

read as under:-

28. *The provisions of the Act or notification are always prospective in operation unless the express language renders it otherwise making it effective with retrospective effect. This Court in **S.L. Srinivasa Jute Twine Mills (P) Ltd. Vs. Union of India & Anr., 2006 (2) SCC 740**, has held that it is a settled principle of interpretation that:*

"retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication; there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary."

29. *In the aforesaid case, the [Employees Provident Fund Act](#) (as amended in 1988) provided that the Act would not apply "to a newly set up establishment for a period of three years from the date on which such establishment is set up." [Section 16](#) (1)(d) was deleted by the [Amending Act](#) w.e.f. 22.9.1997 and the question was whether the initial exemption from application of the Act would continue for the full period of three years from the date of its establishment, even beyond 22.9.1997. Rejecting the contention, as pointed out earlier, it was held that retrospective operation is not taken to be intended unless that intention of the Legislature is projected by express words or necessary implication. Setting aside the order of the High Court it was held:*

"18. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. (See [Keshvan Madhavan Memon v. State of Bombay](#), 1951 SCR 228). But the rule in general is applicable where the object of the statute is to affect

vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only 'nova constitutio futuris formam imponere debet non praeteritis'. In the words of Lord Blansburg,

"provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment." (See [Delhi Cloth & General Mills Co. Ltd. v. CIT](#), AIR 1927 PC 242 at p. 244).

"Every statute, it has been said", observed Lopes, L.J.,

"which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect." (See [Amireddi Raja Gopala Rao v. Amireddi Sitharamamma](#), 1965 (3) SCR 122).

*As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary. (See *Reid v. Reid* (1886) 31 Ch D 402). In other words close attention must be paid to the language of the statutory provision for determining the scope of the retrospectivity intended by Parliament. (See [Union of India v. Raghubir Singh](#), 1989 (2) SCC 754). The above position has been highlighted in *Principles of Statutory Interpretation* by Justice G.P. Singh. (10th Edition, 2006 at pp 474 and 475).*

Xxx xxx

Above being the legal position, the judgments of the High Court are indefensible and are set aside. The appellants shall be entitled to the protection as had accrued to them prior to the amendment in 1997 for the period of 3 years starting from the date the establishment was set up irrespective of repeal of the provision for such infancy protection."

(IV) ***Jawahar Singh @ Bhagat Ji Vs. State of GNCT of Delhi***

[AIR 2009 SCW 3221]. Para 10 propounds re: criminal law as follows:-

"10. It is now beyond any doubt or dispute that the quantum of punishment to be inflicted on an accused upon recording a judgment of conviction would be as per the law, which was prevailing at the relevant time.

As on the date of commission of the offence and/ or the date of conviction, there was no distinction between a small quantity and a commercial quantity, question of infliction of a lesser sentence by reason of the provisions of the [Amending Act](#), in our considered opinion, would not arise.

It is also a well-settled principle of law that a substantive provision unless specifically provided for or otherwise intended by the Parliament should be held to have a prospective operation. One of the facets of Rule of Law is also that all statutes should be presumed to have a prospective operation only."

(V) ***Prakash and others Vs. Phulavati and others*** [2015 (4) R.C.R.

(Civil) 952]. Para 17 reads as under:-

17. The text of the amendment itself clearly provides that the right conferred on a 'daughter of a coparcener' is 'on and from the commencement of [Hindu](#)

Succession (Amendment) Act, 2005. Section 6(3) talks of death after the amendment for its applicability. In view of plain language of the statute, there is no scope for a different interpretation than the one suggested by the text of the amendment. An amendment of a substantive provision is *Page 13 Civil Appeal No.7217 of 2013 etc.* always prospective unless either expressly or by necessary intendment it is retrospective³. In the present case, there is neither any express provision for giving retrospective effect to the amended provision nor necessary intendment to that effect. Requirement of partition being registered can have no application to statutory notional partition on opening of succession as per unamended provision, having regard to nature of such partition which is by operation of law. The intent and effect of the Amendment will be considered a little later. On this finding, the view of the High Court cannot be sustained.

8. On a fair reading of the case law cited in different facets of law understood in the facts and circumstances of the case there is little doubt left as to the effective date of applicability of the Notification 20.12.1985 issued under the Sugar (Price Determination for 1980-81 Production) Amendment Order, 1985 increasing the price of levy sugar for the common pool in the pan India public distribution system. The Notification is prospective in nature as neither are there any express words or necessary intendment therein except stone silence which reticence has to be construed as anti-retrospectivity of the legislative effect of the Order and thus nothing remains to the credit of the petitioning Mills other than what they have already received in terms of moneys. The claim is wholly misconceived and is liable to be rejected.

arguments advanced on both sides, I find no scope to interfere or a valid ground to accept these petitions and would to the contrary, dismiss both of them.

10. Question raised is answered accordingly. No costs.

(RAJIV NARAIN RAINA)
JUDGE

September 06, 2019.
Sandeep

Whether speaking/reasoned:-

Yes

Whether Reportable:-

Yes / No.