IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

821

CWP-9826-2014 (O&M).
Date of Decision: 14.07.2023.

DR. LAXMAN DASS BANSAL

.. Petitioner

Versus

THE DAKSHIN HARANA BIJLI VITRAN NIGAM LIMITED AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Rakesh Nagpal, Advocate,
for the petitioner.

Mr. P.S. Poonia, Advocate, and
Mr. Pulkit Dhanda, Advocate,
for the respondents

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 18.03.2014 (Annexure P-10) whereby the claim of the petitioner for consideration under the 'Out of Court Settlement Scheme' for pending Court Cases/Arbitration Cases as per sale circular No.D-36 of 2012 has been declined relying on Clause 14 thereof and for seeking quashing of the said Clause which denies benefit of the above said Scheme to a consumer merely for having deposited the entire amount.

Briefly summarized, the facts of the present case are that the petitioner, who is running a Hospital in Rania Town, District Sirsa, was served with a notice dated 25.09.2001 by the SDO (Operation) Sub Division, DHBVN to the effect that the premises bearing Account No.TR-17/1330 NDS belonging to the petitioner was inspected by the Assistant Executive Engineer Vigilance and during inspection a hole on the left side of the body of the meter at the load of disk was detected which was prima facie a case of theft of electricity. Accordingly, a demand of Rs.1,26,609/- along with the costs of removing the meter was raised from the petitioner. Further directions in terms of the applicable rules were also issued.

Aggrieved thereof, the petitioner preferred a complaint before the District Consumer Disputes Redressal Forum, Sirsa (hereinafter referred to as 'DCDRF') challenging the notice on various grounds including the merits of his case and flaws of demand. Vide order dated 06.11.2002 the DCDRF decided the complaint in favour of the petitioner and action of the respondent as well as the demand notice dated 25.09.2001 were held illegal and the same were accordingly set aside.

Aggrieved thereof, the respondent-Distribution Utility preferred an appeal before the State Consumer Disputes Redressal Commission, Haryana, Panchkula (hereinafter referred to as 'SCDRC'). Vide its order dated 11.05.2010, the SCDRC, Haryana, allowed the said appeal and the order of the DCDRF dated 06.11.2022 was set side.

A revision petition was thereafter preferred by the petitioner before the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as 'NCDRC'), which was also dismissed on 03.01.2012 and the order of the State Consumer Disputes Redressal Commission, was affirmed. A review application was thereafter filed by the petitioner before the NCDRC bearing application No.12 of 2012 dated

25.01.2012. The same came up for hearing on 13.07.2012 and was adjourned sine die in view of the order passed by the Hon'ble Supreme Court of India, in Special Leave to Appeal (Civil) No.35906 of 2011 with liberty to the petitioner to seek revival thereof upon determination of the said issue by the Hon'ble Supreme Court of India.

In the meanwhile, the respondent-Distribution Utility issued sale Circular No.D-36 of 2012 vide Memo No.CH-36/SE/Commercial/R-16/194/2004 dated 22.10.2012. The object of the scheme is as under:-

> *"Nigam has decided to introduce scheme for Settlement of various categories of Electricity Consumers where disputes are pending in Courts/Arbitration/DCDRF/State Commission etc. in the Lok Adalats being held regularly in all district Head Quarters under the jurisdiction of the DHBVN."*
>
> xx xxx xxx
>
> *2. The scheme will be available to all categories of consumers.*
>
> *3. The scheme will be available to all disputes with consumers of electricity pending in courts including DCDRF, State Commission or in Arbitration etc. as on 30.06.2012.*
>
> *4. All such disputes where penalties have been levied may be settled provided the consumer/applicant pays a reduced amount of 50% of the amount initially assessed along with simple interest @ 12% per annum on the unpaid balance amount of the reduced amount.*
>
> *xxx xxx xxx*
>
> *12. In theft cases booked only for the first time, full of amount of compounding charges along with 50% of assessment amount along with simple interest @ 12% per annum shall be charged from such consumers.*
>
> *xxx xxx xxx*

> *14. <u>The scheme will not be applicable to the cases where 100% payment has been made by the consumer. However, scheme shall be applicable where 50% of assessed amount has been deposited by Consumer</u>.*
>
> *15. The cases already settled/decided will not be re-opened."*
>
> (*Emphasis supplied*)

The petitioner claims that his case was covered under clause 12 of the above said sale circular dated 22.10.2012 and as such he was entitled to the benefit under the said scheme since the review petition was already pending. Accordingly, a representation dated 18.12.2012 was sent to the Managing Director, DHBVN, Panchkula, praying for settlement of the dispute and to grant him the benefit of the aforesaid Scheme. However, as no action was taken, the petitioner filed a civil writ petition No.9640 of 2013 for seeking a direction to the respondents that his case may be considered in view of the aforesaid scheme. The said writ petition came up for hearing on 20.12.2013 and was disposed of with a direction that the representation submitted by the petitioner dated 18.12.2012 may be examined and a speaking order may be passed thereupon.

In compliance to the said order dated 20.12.2013 passed by this Court in CWP-9640 of 2013, the respondents examined the representation submitted by the petitioner and vide order dated 18.03.2014 rejected the claim on the ground that since the petitioner had deposited the full amount, hence, his claim was not covered in view of clause 14 read with clause 15 of the above said scheme. Since the full amount had already been deposited, there was no pending dispute between the parties. Hence, the claim of the petitioner was not covered as per the above said scheme.

Aggrieved thereof, the present writ petition has been filed and raised a challenge to the said clause on the ground that the same is arbitrary and is not based on any rational classification and is not furthering the object of the scheme. It is thus contended that the said clause denies benefit to a person who respected law and confers benefit on a violator.

Written statement on behalf of the respondents had been filed wherein the above said factual aspect is not disputed. Reliance is placed on the above said clauses No.14 and 15 to contend that the decision of the respondents is based on the said clause which is applicable to the claim of the petitioner and that he having deposited 100% of the payment was not covered under the beneficial provisions of the said Scheme. It was also pointed out that the revision petition having been dismissed by the NCDRC, the *lis* in question had been finally decided.

On a pointed query raised to the counsel for the respondent distributor, he could not dispute the fact that a review petition was pending as on 30.06.2012 i.e. the cut-off date as noticed in clause No.3 of the aforesaid scheme. The said review was adjourned sine die on 13.07.2012 and no application seeking revival of the said review petition was ever made by the petitioner. He however, could not refer to any law on the basis whereof it can be said that pendency of a review petition would amount to final closure of a *lis*.

Counsel for the petitioner contends that clause 14 of the aforesaid scheme is contrary to the object of the Scheme and hence, in conflict thereto. The said provision cannot be construed so as to vest premium in the violator and put the compliant consumer to a disadvantage. All the persons whose litigation was pending as on the closing date of scheme fell under one single category and there could not have been any other sub classification. They all constituted a class. Such irrational distinction on the basis of deposit made is not based on any rationality and is in conflict with the object sought to be attained. Since the object of the respondent in floating the aforesaid 'Out of Court Settlement Policy/Scheme' was to put an end to the pending litigation, hence, the review petition preferred by the petitioner being already pending before the NCDRC, he ought to have been extended the benefit of the above said policy.

Per contra, counsel appearing on behalf of the respondent has submitted that the petitioner constitutes a class unto itself and the category is based on rational classification. The identification of the class being clear, the benefit of the scheme could not be given under the scheme document. Moreover, the entire payment having been received, there was no surviving dispute so far as distribution utility is concerned.

I have heard learned counsel appearing on behalf of the respective parties.

The facts have remained undisputed and the claim of the petitioner rests primarily on the validity of the clause 14 of the above said scheme. The object of the scheme was "Out of Court Settlement of cases/Arbitration cases" and also includes within its ambit the cases that are pending before different State Commissions etc. Hence, if a litigation is pending before the NCDRC, notwithstanding the nature of the litigation i.e. as to whether it is an original complaint/appellate jurisdiction/revisional jurisdiction or a review jurisdiction, the nature of dispute having not been qualified, therefore, pendency of a review petition cannot be perceived as the litigation having come to an end. It would be construed as a pending litigation only. That being so, clause 15 would not be attracted to the case of the petitioner and it would not be perceived that the case had been settled/decided inter se amongst the parties as on the last date of the scheme.

The same now leads this Court to consider the impact of the exclusion of the consumers who had deposited 100% payment. I find that the aforesaid clause runs contrary to the object of the scheme. The consumers' whose issues are pending before different Fora and the litigation had not been finally settled formed a class unto themselves for being considered under the above said scheme. The respondents, in excluding the consumer who had deposited the amount from the category of beneficiaries, have invariably acted contrary to the object of the scheme and conferred premium on a violater instead of ensuring that the benefit is extended to all similarly situated persons.

The Hon'ble Supreme Court has held in the matter of ***Manish Kumar Vs. Union of India and others reported as (2021) 5 SCC 1*** that the classification has to be rational and has to be in furtherance of the object of a Scheme and where such classification is in conflict with the object, the same can be read down/struck off. The relevant extract reads as under:-

> *"It is well settled that a legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects; and for that purpose it must have large powers of selection or*

classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not "per se" amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonably arbitrary; that it does not rest on any rational basis having regard to the objects which the legislature has in view. There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A reasonable classification is one which includes all who are similarly situated and none who are not. The question then is: what does the phrase "similarly situated" mean? The answer to the question is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good. The classification must be founded on some reasonable ground which distinguishes persons who are grouped together and the ground of distinction must have rational relation to the object sought to be achieved by the rule or even the rules in question. It is a mistake to assume a priori that there can be no classification within a class. The principles which govern the legitimacy of a sub-class within a class, are based essentially on the very principles which are discernible in regard to reasonable classification under Article 14 of the Constitution. It is clear that the law does not interdict the creation of a class within a class absolutely. Should there be a rational basis for creating a sub-class within a class, then, it is not impermissible. A

> *class within a sub-class, is indeed not antithetical to the guarantee of equality under Article 14 of the Constitution."*
>
> ***(Emphasis Supplied)***

Thus, while classification is permissible in law, the test prescribed is reasonable classification and intelligible differentia. The underlying factors for such reasonableness and intelligible differentia is the purpose or object of the State action. The primary object of scheme being settlement of court disputes and if a *lis* is pending, a sub-classification to deny the benefit merely for having made a deposit without prejudice to his rights, would run contrary to the object. The Hon'ble Supreme Court said in the matter of "***State of Gujarat Vs. Shri Ambica Mills Ltd.***," reported as ***1974 (4) SCC 656***, that a reasonable classification is one which includes all persons who are similarly situated with respect to the purpose of law which may either be elimination of public mischief or achievement of some positive public good. None of the said object seems to be fulfilled by such sub classification under clause 14.

I find that the reasoning given by the respondents for excluding the petitioner under clause 14 of the above said scheme is not in furtherance to the object sought to be achieved by the respondents and rather gives rise to increased litigation forcing the consumer to come to the Court for seeking consideration under the above said Scheme.

Accordingly, the present petition is allowed. The impugned order dated 18.03.2014 is set aside. The respondents are directed to consider the case of the petitioner in terms of the above said scheme and to refund/adjust the benefit that has accrued in favour of the petitioner.

Since the main case stands disposed of, pending misc. applications, if any, shall also stand disposed of accordingly.

July 14, 2023 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No