

03.07.2025.
Item No. 9.
Court No. 13
ap/AP

M.A.T. No. 872 of 2024
With
I.A. No. CAN 1 of 2024

Smt. Shila Roy (Saha)
Versus
State of West Bengal & Ors.

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal,
Mr. Saikat Gayen.

...For the appellant.

Mr. Susovan Sengupta,
Mr. Subir Pal.

...For the State.

1. The instant intra court appeal is directed against the order dated 21st March, 2024 passed by a learned Single Judge of this Court in W.P.A. 6337 of 2024.
2. By the impugned judgment, the learned Single Judge of this Court rejected the claim of the writ petitioner for compassionate transfer of license as daughter-in-law of one Bishnu Kumar Roy, an existing FPS licence holder.
3. The facts of the case are that one Bishnu Kumar Roy was an existing FPS licence holder, who died on 4th October, 2015. The legal heirs of the said Bishnu Kumar Roy were Nirod Baran Roy, Aparna Banerjee and Parbati Chatterjee.
4. Upon the death of the original licensee, his grandson, namely, Rana Roy, applied for FPS licence on compassionate ground. The said application was

rejected since the Control Order of the year 2013 at Section 2(m) did not include the grandson within the expression “family members”.

5. The said Rana Roy, grandson challenged the rejection of his case by W.P. 1447 (W) of 2018. The said writ petition was dismissed on 26th June, 2018 with liberty to other legal heirs of the deceased licensee to apply for FPS licence on compassionate ground in terms of the applicable Rules thereof.

6. Curiously, the appellant herein had not applied for compassionate transfer of dealership either in the year 2015 or after the decision of the learned Single Judge dated 26th June, 2018 (supra).

7. Be that as it may, Section 2(m) of the Control Order of 2013 was amended by a Notification dated 29th September, 2023. By reason of the amendment, a daughter-in-law i.e. son’s spouse replaced, widow of pre-deceased son within the expression “family members” under Section 2(m) of the Control Order of 2013.

8. Before the Single Bench and this Court, learned counsel for the appellant argued that the appellant’s cause of action arose only on 29th September, 2023 after the amendment of the Clause 2(m) of the Control Order of 2013. She could not, therefore, apply for transfer of licence on compassionate grounds prior thereto.

9. It is next argued that the amendment to Clause 2(m) on 29th September, 2023 and such amendment being clarificatory, it would have retrospective effect and date back to the death of the original licensee Bishnu Kumar Roy, i.e. 2015.

10. Reliance has been placed on a decision of a Coordinate Bench of this Court in the case of ***Sokhina Bibi Vs. Sahidur Rahaman @ Sahidur Islam & Ors.*** reported in ***(2024) SCC OnLine 2550***. It was held in the paragraphs 11 to 12 of the said judgement that the amendment dated 29th September, 2023 is clarificatory in nature and would have retrospective effect from 2013.

11. This Court is of the view that the Coordinate Bench in its judgement dated 15th March, 2024 may have ignored of the binding dicta under Article 141 of the Constitution, in para 19, 20 and 21 in the case of ***State of Bihar Vs. Ramesh Prasad Verma*** reported in ***(2017) 5 SCC 665*** and in paragraph 52 of the decision of the Supreme Court in the case of ***Sree Sankaracharya University of Sanskrit and Ors. Vs. Dr. Manu and Anr.*** reported in ***2023 SCC OnLine SC 640***.

12. This Court holds as such as that the decisions have been referred to by the Coordinate Bench but their scope has not been correctly appreciated or applied.

13. In terms of the practice followed in this country and in this Court, a decision of an earlier co-ordinate bench is binding on subsequent bench. If the subsequent Division Bench differs with the views of another, it is required to place the matter before the Hon'ble Chief Justice for constitution of a Larger Bench.

14. The exception to the rule is however that if the earlier bench has not applied a binding precedent such judgment becomes per in-curium or even sub-silentio. Reference in this regard is made to paragraphs 40 and 41 of the decision of the Supreme Court in the case of **State of UP Vs. Synthetics and Chemicals Ltd.** reported in **(1991) 4 SCC 139**.

40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd. [(1944) 1 KB 718 : (1944) 2 All ER 293]). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu v. Rajdewan Dubey [(1962) 2 SCR 558 : AIR 1962 SC 83] this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense

that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind.” (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. v. Bremith Ltd. [(1941) 1 KB 675, 677 : (1941) 2 All ER 11] the Court did not feel bound by earlier decision as it was rendered ‘without any argument, without reference to the crucial words of the rule and without any citation of the authority’. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. [(1989) 1 SCC 101] The bench held that, ‘precedents sub-silentio and without argument are of no moment’. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao v. Union Territory of Pondicherry [AIR 1967 SC 1480 : (1967) 2 SCR 650 : 20 STC 215] it was observed, ‘it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein’. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

15. This Court therefore proceeds to decide this appeal on the basis of the binding decisions of the Supreme Court, more fully discussed hereinbelow.

16. There is yet another reason for this Court to not apply the decision of the **Sokhina Bibi (Supra)**. The last part of paragraph 7 of the judgement dated 15th March, 2024 is set out hereinbelow:-

“7. Learned Counsel for the State in view of the amendment brought-on-record supports submission of Mr. Agarwala and submits that the amendment is mere explanatory and it has retrospective effect. It is further submitted by him

that had the amendment brought any procedural change or any penal provision, consideration would have been different.”

17. It is clear from the aforesaid that the counsel for the State had agreed with the arguments of learned counsel for the appellant that the amendment dated 29th September, 2023 did not bring out any procedural change or introduce any penal provision and was hence retrospective in operation. The **Sokhina Bibi decision (Supra)** was decided by consent. So the Court may not have felt the need to look into binding precedents.

18. This Court is of the view that the Coordinate Bench of this Court was misled by such submission made on behalf of the counsel for the State in passing the judgement dated 15th March, 2024 (supra).

19. In **Ramesh Prasad Verma (supra)** at Paragraphs 19, 20 and 21 it was held as follows:

19. In *CIT v. Gold Coin Health Food (P) Ltd.* [*CIT v. Gold Coin Health Food (P) Ltd.*, (2008) 9 SCC 622], a three-Judge Bench of this Court, while dwelling on the sweep of a clarificatory or declaratory legal provision, relied on the following extract from the celebrated treatise “*Principles of Statutory Interpretation*”, 11th Edn., 2008 by Justice G.P. Singh : (SCC p. 630, para 19)

“19. ... ‘*The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court: “For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such acts are usually held to be retrospective. ...” ...An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective*

operation is generally intended. The language “shall be deemed always to have meant” or “shall be deemed never to have included” is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. *A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law.’”*

(emphasis supplied)

20. The following quote contained in *Zile Singh v. State of Haryana* [*Zile Singh v. State of Haryana*, (2004) 8 SCC 1 : AIR 2004 SC 5100] was also noted with approval : (SCC p. 9, para 14)

*“14. The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is “to explain” an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended.... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (*Ibid.*, pp. 468-69).”*

(emphasis supplied)

21. The proposition has been so well laid that we do not wish to burden the present rendition by referring to other rulings in the same vein. Suffice it to state that any legislation or instrument having the force of law, if clarificatory, declaratory or explanatory in nature and purport, in order to supply an obvious omission or to clear up doubts qua any prior law, retrospective operation thereof is generally intended.....

20. Paragraph 52 of the ***Sree Sankaracharya University of Sanskrit (supra)*** has been set out in the judgement impugned dated 21st March, 2024 of the Single Bench. For the sake convenience the said paragraph once again set out hereinbelow:-

“52. From the aforesaid authorities, the following principles could be culled out:

i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.

ii) In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the preamended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.

iii) An explanation/clarification may not expand or alter the scope of the original provision.

iv) Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.”

21. It is clear and explicit from the said decisions that an amendment to a statutory provision would ordinarily be prospective unless the original rule was vague and was not capable of implementation on its plain reading.

22. The amendment dated 29th September, 2023 created new rights in favour of the daughter-in-law to apply for compassionate transfer of licence of a deceased PFS licensee. The daughter-in-law was not entitled to such transfer as the un-amended Rule 2(m)

contained the expression “widow of pre deceased son” of a deceased licensee, as a family member. The expression “widow of pre deceased son” was neither vague nor incapable of application.

23. Given the new right created in the amendment dt 29th September, 2023, in favour of daughters-in-law even during the lifetime of an existing son or post deceased son (i.e., son who died after the death of the licensee) by no stretch of imagination can it be said that the amendment to the Control Order of 2013 is clarificatory and consequently would have retrospective operation.

24. There is yet another way of addressing the effect of the amendment and a claim of the writ petitioner. If the amendment was, in fact, clarificatory of a vague provision the writ petitioner ought to have come forth either in 2015 or 2018 to apply for compassionate ground. The writ petitioner, in fact, understood and accepted that new rights have been created for the first time in September 2023 and hence decided to apply for first time for compassionate transfer of FPS licence in her favour post September 2023. The writ petitioner/appellant, therefore, also must be deemed to have understood and accepted that new rights have been created post September 2023 and such rights are, therefore, essentially prospective.

25. The reasoning and finding of the Single Bench and the interpretation of the decision of the Supreme Court in the case of ***Sree Sankaracharya University of Sanskrit (supra)*** is approved with appreciation of this Court.

26. The decision of ***Sokhina Bibi (supra)*** is even otherwise distinguishable on facts and cannot be applied in the instant case. In the said case Sokhina Bibi, widow of the deceased son applied for compassionate appointment immediately after the death of the son who died while his application for compassionate transfer was pending in the instant case.

27. Indeed as found by the Single Bench, the writ petitioner/appellant had not applied for transfer of licence on compassionate grounds either upon the death of her father-in-law in 2015 or pursuant to leave granted by another Single Bench by an order dated 26th June, 2018.

28. For the reasons stated hereinabove, this Court is of the view that the amendment to the Control Order of 2013 effected on 29th September, 2023 is prospective in nature and not retrospective. The finding of the Single Bench in this regard is upheld.

29. The other finding of the Single Bench that the compassionate appointment is not a matter of right

and is to be made strictly in terms of the applicable rules is equally appreciable and upheld.

30. By reason of not applying in the year 2015 and waiting until 2023, the appellant/writ petition has clearly demonstrated that she was not dependent on the income of her father-in-law from the said FPS licence.

31. For the reasons stated hereinabove, M.A.T. No. 872 of 2024 fails and hereby dismissed. Consequently, all connected pending applications, if any, are also dismissed.

32. There shall be no order as to costs.

33. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)