EMP., MGMT OF RAMKANALI COLLIERY OF M/S. BCCL

v.

WORKMEN BY SECY. RASHT. COLLIERY MAZDOOR SANGH AND ANR.

MARCH 27, 2001

[S. RAJENDRA BABU AND S.N. VARIAVA, JJ.]

Coal Mines Nationalisation Act, 1973 : Section 14.

Coal Mines—Nationalisation of—Workmen stopped from working by management—Management contended that the workmen were not in employment before takeover—Industrial Tribunal held that the workmen were workmen at the time of takeover and should be allowed to resume their duties—Correctness of—Held : Tribunal found that the workmen in question have not ceased to be employees, but were not allowed to do work—Such finding of fact cannot be faulted with at all—Hence, no interference called for—Labour Laws.

The respondent-workmen raised a dispute before the Industrial Tribunal that they were stopped from work in the Colliery of the appellant-management. The appellant contended before the Tribunal that the non-coking coal mines were taken over by the Central Government and was nationalised and none of the respondent-workmen were in employment before the date of takeover. The Tribunal held that the concerned workmen were workmen of the Colliery at the time of takeover and they should be allowed to resume duty from the date of takeover. The High Court dismissed the writ petition filed by the appellant. Hence this appeal.

On behalf of the appellant it was contended that under Section 14 of the Coal Mines Nationalisation Act, 1973 a workman who was in the employment on the appointed date, namely 1.5.1973 alone was entitled to be protected in employment; that on the date when the reference was made to the Tribunal, provision of Section 14 of the Act stood substituted with retrospective effect from 1.5.1973 and, therefore, the Tribunal could not have passed the award in 1987.

Dismissing the appeal, the Court

HELD : 1. If there is both repeal and introduction of another provision in place thereof by a single exercise, the expression "substituted" is

A used. Such deletion has the effect of the repeal of the existing provision and also provide for introduction of new provision. There is thus no real distinction between repeal and amendment or substitution in such cases. If that aspect is borne in mind, the usual principles of finding out the rights of the parties flowing from an amendment of a provision have to be B applied. If there is a vested right and that right is to be taken away, necessarily the law will have to be retrospective in effect and if such a law retrospectively takes away such a right, it can no longer be contended that the right should be enforced. However, that legal position, in the present case, does not affect the rights of the parties as such. [852-F-G]

C *Workmen* v. *Bharat Coking Coal Ltd.*, [1978] 2 SCC 175 and *Bhagat Ram Sharma* v. *Union of India*, [1988] Supp. SCC 30, relied on.

Bhubaneshwar Singh v. *Union of India*, [1994] 6 SCC 77, held inapplicable.

D 2. The Coal Mines Nationalisation Act, 1973 came into force on 1.5.1973 and the employees (including former employees whose services were terminated) will continue to hold such employment as if nationalisation had not taken place. In the present case the finding of the Tribunal is that the employees in question had not ceased to be employees but were E merely not allowed to do work. This finding of fact arrived at on appreciation of evidence, cannot be faulted with at all. Hence, the right enforced by the employees will not attract the amended provision of the Act, which came into force on 15.12.1986. [852-H; 853 A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5797 of 1998.

F

From the Judgment and Order dated 5.4.98 of the Patna High Court in L.P.A. No. 125 of 1989 (R).

WITH

G Civil Appeal No. 7596 of 1999.

Soli J. Sorabjee, Attorney General, Ajit Kumar Sinha and S.C. Malik for the Appellant.

S.B. Upadhyay, Ms. Shweta Verma, Ms. Santosh Misra, Tathagat H. H Vardhan and Sujit Kumar for the Respondents.

The Judgment of the Court was delivered by A

RAJENDRA BABU, J. C.A.No. 5797/1998

Four workmen, who claimed to be working from May or July 1972 in the Ramkanali Colliery of the appellant, raised a dispute that they were stopped from work by the management. The appellant contended before the B Industrial Tribunal to whom this matter was referred that the non-coking coal mines were taken over by the Central Government on 31.1.1973 and was nationalized with effect from 1.5.1973 and none of these workmen were in employment before the date of take over. After the take over of the Colliery, a Screening Committee consisting of the representatives of the employer and C the workmen scrutinized the claim of the workmen and found that the claim of these workmen was without any basis.

The reference made to the Industrial Tribunal reads as follows :

> "Whether the demand of the workmen of Ramkanali Colliery of D Messrs. Bharat Coking Coal Limited, Post Office Katrasgarh, District Dhanbad that Sarvashri Bishundeo Singh, Kanhaiya Prasad Karan, Attendance Clerks, Ashok Kumar Das, Munshi and Bachu Singh, Night Guard of West Ramkanali Section should be allowed to resume duty is justified? If so, to what relief are the workmen concerned entitled and from what date?" E

The Tribunal examined the matter in detail and on consideration of evidence held that the concerned four workmen were workmen of the Ramkanali Colliery at the time of take over and they should be allowed to resume duty from the date of take over. Thereby the management of the F appellant was directed to reinstate the said workmen with continuity of service from the respective dates of stoppage of their duties. However, the Tribunal made certain adjustments regarding payment of wages for the period for which they had not worked. The matter was carried by way of a writ petition to the High Court. The learned Single Judge allowed the writ petition and set aside the award and the matter was carried by the workmen in letters G patent appeal to the Division Bench which allowed the same and restored the award made by the Tribunal. Hence this appeal by special leave.

The contention put forth before us is that under Section 14 of the Coal Mines Nationalisation Act, 1973 [hereinafter referred to as 'the Act'] a H

A workman who was in the employment on the appointed date, namely, 1.5.1973 alone is entitled to be protected in employment. On the date when the reference was made to the Tribunal, provision of Section 14 of the Act stood substituted with retrospective effect from 1.5.1973 and, therefore, the Tribunal could not have passed the award in the year 1987.

B In the *Workmen* v. *the Bharat Coking Coal Ltd. & Ors.*, [1978] 2 SCC 175, this Court examined the scope and effect of the provisions of Sections 9 and 17 of the Coking Coal Mines Nationalisation Act, 1972, which are identical to Sections 7 and 14 of the Act in all respects. This Court held that Section 9 (similar to Section 7 of the Act) granted immunity to the Govern-
C ment against any award and it has to be read along with Section 17(1) (similar to Section 14(1) of the Act). So read, Section 9 does not nullify Section 17 or have a larger operation. In very felicitous terms, this Court stated the position as under:

D "7. Section 9 deals with the topic of prior liabilities of the previous owner. Section 9(1) speaks of "every liability of the owner ..... prior to the appointed day, shall be the liability of such owner ..... and shall be enforceable against him and not against the Central Government or the Government Company". The inference is irresistible that Section 9(1) has nothing to do with wrongful dismissals and awards
E for reinstatement. Employees are not a liability (as yet in our country). Section 9(1) deals with pecuniary and other liabilities and has nothing to do with workmen. If at all it has anything to do with workmen it is regarding arrears of wages or other contractual, statutory or tortious liabilities. Section 9(2) operates only in the area of Section 9(1) and
F that is why it starts off by saying "for the removal of doubts it is hereby declared .....". So, Section 9(2) seeks only to remove doubts in the area covered by Section 9(1) and does not deal with any other topic or subject matter. Section 9(2)(b) when it refers to 'awards' goes along with the words 'decree', or 'order'. By the canon of construction of *noscitur a sociis* with expression 'award' must have a
G restricted meaning. Moreover, its scope if delimited by Section 9(1). If back wages before the appointed day have been awarded or other sums, accrued prior to nationalisation, have been directed to be paid to any workman by the new owner, Section 9(2)(b) makes such claims non-enforceable. We do not see any reason to hold that Section
H 9(2)(b) nullifies Section 17(1) or has a larger operation than Section

9(1). We are clear that the whole provision confers immunity against liability, not a right to jettison workmen under the employ of the previous owner in the eye of law." A

Now the contention put forth before us is that Section 14 of the Act stood substituted by an amendment made to it by deleting several provisions thereof. Section 14(1) of the Act provided as follows : B

"*14. Employment of certain employees to continue -*

(1) Every person who is a workmen within the meaning of the Industrial Disputes Act, 1947, and has been immediately before the appointed date, an employee of the Central Government, in which the right, title and interest of such mine have vested under this Act, and shall hold office or service in the coal mine with the same rights would have been admissible to him if the rights in relation to such coal mine had not been transferred to, and vested in, the Central Government or the Government Company, as the case may be, and continue to do so unless and until his employment in such Coal Mine is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Central Government or the Government Company." C D

(Rest of the provisions not extracted since unnecessary) E

The said provision stood deleted and substituted by the following provision:

"14. Liability of officer or other employee of a coal mine for transfer to any other coal mine. Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the services of any officer or other employee employed in a coal mine shall be liable to be transferred to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority." F G

The argument advanced now is that protection available under Section 14 is no longer available on the date when the award was made and, therefore, contended that the award is a nullity. The decision in *Bhubaneshwar Singh & Anr.* v. *Union of India & Ors.*, [1994] 6 SCC 77, is in the context of enactment of law reviewing the defect pointed out in a judgment and H

A retrospectively enacting the law so as to render the judgment of the court ineffective thus enacting a validating provision was considered. What happened in that case was courts took the view that the sale price of the stock of extracted coal lying at the commencement of the appointed date had to be taken into account for determining the profit and loss during the period of management of the mine by Central Government. Thereafter, the Coal Mines Nationalisation Laws (Amendment) Ordinance and Act, 1986 was issued. Section 19(2) of the Principal Act as introduced by the Amending Act and Section 19 of the Amending Act providing that the amount payable as compensation shall be deemed to include and deemed always to have included in the amount required to be paid to the owner in respect of all coal in stock on the date immediately before the appointed date. The said Amending Act was held to be valid as it altered the basis of the principal Act with retrospective effect as a result of which court judgment was rendered ineffective and, therefore, this Court upheld the said provision. That decision can have no application to the present case nor are we concerned with the validity of the provisions of the enactment in question. What we are concerned in the present case is the effect of the expression "substituted" used in the context of deletion of sub-clauses of Section 14, as was original enacted. In *Bhagat Ram Sharma* v. *Union of India & Ors.*, [1988] Supp. SCC 30, this Court stated that it is a matter of legislative practice to provide while enacting an amending law, that an existing provision shall be deleted and a new provision substituted. If there is both repeal and introduction of another provision in place thereof by a single exercise, the expression "substituted" is used. Such deletion has the effect of the repeal of the existing provision and also provide for introduction of new provision. In our view there is thus no real distinction between repeal and amendment or substitution in such cases. If that aspect is borne in mind, we have to apply the usual principles of finding out the rights of the parties flowing from an amendment of a provision. If there is a vested right and that right is to be taken away, necessarily the law will have to be retrospective in effect and if such a law retrospectively takes away such a right, it can no longer be contended that the right should be enforced. However, that legal position, in the present case, does not affect the rights of the parties as such.

The Act came into force on 1.5.1973 and the employees (including former employees whose services were terminated) will continue to hold such employment as if nationalisation had not taken place. In the present case, the finding of the Tribunal is that the employees in question had not ceased to

be employees but were merely not allowed to do work. This finding of fact arrived at on appreciation of evidence, cannot be faulted with at all. Hence, the right enforced by the employees will not attract the amended provision of the Act which came into force on 15.12.1986. A

In that view of the matter, we do not think that the award made by the Tribunal is in any way wrong particularly, when the decision has been given on facts that as on the date of the take over the concerned workmen were employees of the appellant management. If that is so, they never ceased to be employees. All that happened was they were prevented from working in the Colliery, which was set right by the award. We find no substance in this appeal. The same shall, therefore, stand dismissed. No costs. B C

C.A.No. 7596/99

The questions arising for consideration being identical this appeal is also dismissed.

V.S.S. Appeals dismissed. D