State of Nagaland and Others Vs Sentimeren AO, Laboratory Assistant and Others

Court: Gauhati High Court (Kohima Bench)

Date of Decision: April 28, 2006

Acts Referred: Constitution of India, 1950 â€" Article 20

Citation: (2007) 1 GLR 564 : (2006) GLT 601 Supp

Hon'ble Judges: M.B.K. Singh, J; I.A. Ansari, J

Bench: Division Bench

Final Decision: Allowed

Judgement

M.B.K. Singh, J.
A Single Bench of this court passed a common Judgment and Order on 21.4.2005 disposing of the WP(C) Nos. 178

(K)2002, 192(K) 2002, 205(K) 2002, 212(K) 2002, 188(K) 2002, 219(K) 2002, 208(K) 2002, 223(K) 2002, 207(K) 2002, 215(K) 2002,

224(K) 2002, 209(K) 2002 and 211(K) 2002 in favour of all the writ petitioners and quashing the order of the Director of Higher and Technical

Education, dated 26.9.2002, which was challenged in all the said writ petitions, insofar as the writ petitioners were concerned. The impugned

order, dated 26.9.2002, was regarding the retention and termination of the then existing work-charged and casual employees in the Department of

Higher and Technical Education, Government of Nagaland. It was, purportedly, issued on the direction of the State Government, vide its letter No.

HTE/1-32/2001/231 dated 8.5.2002, after getting the approval of the State"s Cabinet in respect of the recommendation of the Nagaland Work-

Charged and Casual Employees Commission, which had purportedly be constituted following the provisions of Sections 4 and 12 of the Nagaland

Work-Charged and Casual Employees Regulation Act, 2001 on 30.4.2001. After ascertaining that the notification issued by the State Government

appointing the 1st April, 2001 as the date on which the provisions of the Nagaland Work-Charged and Casual Employees Regulation Act, 2001

should come into force was published in the Nagaland Gazette on 31.5.2001 and that the said Act was published in the Nagaland Gazette on

15.6.2001, the learned Single Judge held to the effect that the said Act came into force with effect from 31.5.2001 at the earliest and with effect

from 15.6.2001 at the latest. In the opinion of the learned Single Judge, since the Act was not in force when the said Commission, was constituted

by the State Government, it was not legally constituted and as such, the said order dated 26.9.2002 having been passed on the recommendation of

the said Commission, which was found illegally constituted, was not sustainable in the eye of law.

2. In the present writ appeals, the respondents in the above referred writ petitions are challenging the legality of the said common Judgment and

Order dated 21.4.2005 by which all the writ petitions were disposed of. In short, it is the case of the appellants that the said Act came into force

with effect from the 1st April, 2001, which was the date appointed by the State Government as the date from which the provisions of the said Act

should come into force as per provisions of Section 1(3) of the Act and as such, the impugned common order dated 21.4.2005 is not sustainable

in the eye of law.

3. We have heard Mr. L.S. Jamir, learned Addl. Senior Government Advocate appearing on behalf of the appellants, who submits in support of

their case and Mr. C.T. Jamir, learned Counsel appearing on behalf of the respondents, who submits in support of the impugned common

Judgment and Order passed by the learned Single Judge. The only point in dispute in between the parties is as to when the said Act of 2001 can

be said to have come into force. These appeals are to be decided on the basis of the decision on the said dispute.

4. It is ascertain that as per provisions of Section 1(3) of the said Act of 2001, it shall come into force on such date as the State Government may,

by notification in the official Gazette, appoint. The said Section 1(3) empowers only the State Government to appoint the date as the date for

coming into force of the said Act. No authority other than the State Government can appoint the date for coming into force of the Act. If any date

is to be substituted in place of the date appointed by the State Government, that will be clearly in violation of the provisions of the said Section. It is

further required that the said appointment must be by notification in the official gazette. This section does not state anything if the notification in the

official gazette regarding the appointment of the date is to be published before the said appointed date or after it. However, since the said

appointment must be by notification in the official gazette, even if the date is appointed by the State Government by a notification, unless and until

the notification is published in the official gazette, the said date cannot be taken as the date appointed as per provisions of Section 1(3) of the said

Act.

5. In our present cases, there is no dispute that the State Government appointed the 1st April, 2001 as the date on which the provisions of the said

Act of 2001 should come into force by issuing the Notification dated 31.3.2005 and that the same was published in the Nagaland Gazette on

31.5.2001. Thus, in respect of the appointment of 1.4.2001 as the date for coming into force of the said Act of 2001, the State Government has

substantially complied with the provisions of Section 1(3) of the said Act. In our opinion, in the absence of any sufficient grounds for concluding

otherwise, 1.4.2001, which was appointed by the State Government by the said Notification in the official gazette, should be taken as the date with

effect from which the said Act of 2001 came into force.

6. The learned Single Judge referred to various decisions such as Harla Vs. The State of Rajasthan, Atar Singh Vs. State, ; M/s. Fuerst Day

Lawson Ltd. Vs. Jindal Exports Ltd., ; Collector of Central Excise Vs. New Tobacco Co. Etc. Etc., and Ahuja Industries Ltd. Vs. State of

Karnataka and Others, and held that for enforcement of an Act, it should be made known to all by publishing the same in the official gazette.

According to the learned Single Judge, the Nagaland Work-charged and Casual Employees Regulation Act, 2001 came into force with effect from

31.5.2001, i.e., date of publication of the said Notification of the State Government in the official gazette at the earliest and at the latest from

15.6.2001, i.e., the date of publication of the said Act in the official gazette.

7. The above said view of the said Act of 2001 having two different dates of its coming into force/commencement is not acceptable inasmuch as

Section 1(3) of the said Act contemplates for one particular date to be appointed by the State Government as the date of commencement of the

Act in the manner prescribed i.e. by Notification in the official gazette. It is not the situation wherein an Act contemplates for fixing different dates in

respect of commencement of different provisions of the Act. By holding to the effect that the said Act of 2001 will be having two different dates of

its coming into force commencement, none of which is a date appointed by the State Government as prescribed in Section 1(3) of the Act, the

obvious intention of the legislature to let the State Government appoint a particular date as the date of commencement of the act has not to be

allowed to be fulfilled. At the same time, the exercise of the State Government u/s 1(3) of the said Act of 2001 appointing the 1st April, 2001 as

the date for commencement of the said Act by Notification in the official gazette has been rendered nugatory, futile and meaningless inasmuch as

two different dates have been treated as the dates from which the said Act came into force. The provisions of Section 1(3) of the said Act of 2001

has been construed by the learned Single Judge in such a way thereby making the provisions ineffective and contrary to the intention of the

legislature.

8. It is well settled that any enacting provisions in an Act must be so construed to make it effective and operative on the principle express in the

maxim : Ut Res Magis Valeat Quasi Pereat. In our considered opinion, the intention of the legislature to let the State Government appoint a date as

the date for commencement of the said Act must be allowed to be fulfilled by treating the said date appointed by the State Government for the said

purpose in the prescribed manner as the date on which the said Act came into force. If the date is found not to have been appointed in the

prescribed manner, i.e., if the date is found to have been appointed by the State Government by a Notification but not in the official gazette, the

said date cannot be taken as the date appointed in accordance with, the provisions of the Section 1(3) of the said Act and as such, the said Act of

2001 cannot be said to have come into force from the said Act. In our present case, the date, 1.4.2001 is found to have been appointed by the

State Government by the Notification dated 31.3.2001 as the date of commencement of the said Act and the said Notification was published in the

Nagaland Gazette on 31.5.2001. Even though the said Notification appointing the date 1.4.2001 as the date for coming into force of the Act was

subsequently published in the official gazette only on 31.5.2001, there is no appreciable reason as to why the said appointed date should not be.

taken as the date with effect from which the said Act came into force.

9. The basis of the decision of the learned Single Judge that a law cannot be said to have come into force unless and until it has been published in

the official gazette is not a valid legal proposition acceptable in all situations irrespective of the nature of the legislation involved in a case. None of

the decisions referred above supports the said proposition that a law cannot be said to have come into force unless and until it has been published

in the official gazette. Regarding the need of publication in the official gazette before a law can be said to have come into force, a distinction or

differential treatment has always been made in between a law enacted by the Parliament or by the State legislature and a sub-ordinate legislation.

The reasoning for this differential treatment is that the statutes of Parliament or State legislatures get antecedent publicity as they are publicly

enacted and so they come into force even on the earliest moment of the day on which they are passed but this is not true of a sub-ordinate or

delegated legislation which does not receive any prior publicity and it does not come into operation until it is made known. This differential

treatment can also be seen in some of the decisions referred above.

10. In Harla Vs. The State of Rajasthan, the Apex Court observed:

The principle underlying this question has been judicially considered in England. For example, on a somewhat lower plane, it was held in Johnson

v. Sargant (1) that an Order of the Food Controller under the Beans, Peas and Pulse (Requisition) Order, 1917 does not become operative until it

is made known to the public, and the difference between an Order of that kind and an Act of the British Parliament is stressed. The difference is

obvious. Acts of the British Parliament are publicly enacted. The debates are open to the public and the Acts are passed by accredited

representatives of the people who in theory can be trusted to see that their constituents known what has been done. They also receive constituents

know what has been done. They also receive wide publicity in papers and, now, over the wireless. Not so Royal Proclamations and Orders of a

Food Controller and so forth, There must therefore be pinmulgation and publication in their cases. The mode of publication can vary; what is a

good method in one country may not necessarily be the best in another. But reasonable publication of some sort there must be.

Nor is the principle peculiar to England. It was applied to France by the Code Nepoleon, the first Article of which states that the laws are

executory ""by virtue of the promulgation thereof"" and that they shall come into effect ""from the moment at which then promulgation can have been

known."" So also it has been applied in India in, for instance, matters arising under Rule 119 of the Defence of India Rules. See, for example,

Crown v. Manghumai Tekumal (1), Shakoor v. King Emperor (2) and Babulal v. King Emperor (3). It is true none of these cases is analogous to

the one before us but they are only particular application of a deeper rule which is founded on natural justice.

11. In Harla''s case (supra), the question involved was in respect of the Jaipur Opium Act which was in no way promulgated or published. An Act

was passed by a resolution of the Council of Ministers of Jaipur who derived their authority to make laws, during the minority of the Maharajah of

Jaipur, from a Notification issued by the Crown representative which did not expressly required the publication of the law made by the Council.

The Apex Court held that the Act was ineffective and never became law as it was never promulgated or published. Bosh, J, said : ""Natural justice

requires that before a law can become operative, it must be promulgated or published. It must be broadcast in some recognisable way so that all

men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through which such

knowledge can be acquired with the exercise of due and reasonable diligence.

12. In Harla''s case, the Apex Court was dealing with a penal law and in the context in which the above observation was made, we are of the

opinion that Haria''s case cannot be considered as an authority for the proposition that a law cannot be said to have come into force unless and

until it has been published in the official gazette. It is to be noted that a penal statute which creates offences or which has the effect of increasing

penalties for existing offences will only be prospective by reason of the constitutional restriction imposed by Article 20 of the Constitution. Even

otherwise a penal statute is construed prospective because it manifestly shocks one''s sense of justice that an act, legal at the time of doing it,

should be made unlawful by some new enactment. In this context, we have to consider the above observations in Harla''s case.

13. In B.K. Srinivasan and Others Vs. State of Karnataka and Others, , where the statute itself required the publication of the delegated legislation

and where the finding was that there was publication as required by the statute, the Apex Court made some genersu observations which support

the view that the publication in some suitable form, even if not specifically required by the statutes, is essential for making the delegated legislation

effective. The Supreme Court held at para 15:

But unlike Parliamentary legislation which is publicly made, delegated or subordinate legislation is often made unobtrusively in the chambers of a

Minister, a Secretary to the Government or other official dignitary. It is, therefore, necessary that subordinate legislation, in order to take effect,

must be published or promulgated in some suitable manner, whether such publication or promulgation is prescribed by the parent statute or not. It

will then take effect from the date of such publication or promulgation.

14. In Harla and B.K. Srinivasan''s cases, the Supreme Court duly recognised and accepted the differential treatment in between a law enacted by

legislature and a subordinate or delegated legislation in respect of tile need or requirement for publication in the official gazette before a law can be

said to have come into force. So far as a subordinate legislation or delegated legislation is concerned, on the basis of the principle enunciated in tile

above said two cases, some form of publication is required before the legislation can be effective. As per the decision of the Supreme Court in

B.K. Srinivasan''s case, if the mode of publication is prescribed by the statute that must be followed; if the mode of publication is prescribed by the

subordinate legislation itself and the mode so prescribed is reasonable that mode must also be followed; but if there is neither any mode of

publication prescribed by the statute nor by the subordinate legislation or when tile mode prescribed by the subordinate legislation is unreasonable,

it will lake effect only when it is published through the customarily recognised official channel, namely, the official gazette or some other reasonable

mode of publications; and in cases where individuals or persons in some local area are concerned, publication or promulgation by other means may

be sufficient. The above said two decisions are not authorities for the said proposition that a law enacted by a State legislature cannot be said to

have come into force unless and until it has been published in the official gazette.

15. In Atar Singh Vs. State, the Allahabad High Court was dealing with Section 1(3) of the Arms Act, 1959 by which power was given to the

Central Government to lay down the date of commencement of the Act. It was held that even though the Arms Act, 1959 was passed by the

Parliament and received the assent of the President, it did not come into force at once and did not become a law of the country till the notification

was issued by the Central Government and published in the official gazette. This case is not of much help in deciding the issue involved in our

present case. Nothing is found to have been considered in the said case before the Allahabad High Court about the question if the date of

publication of the notification in the official gazette was different from the one appointed by the Central Government as the date for the

commencement, of the Act or not which is the situation involved in our present cases.

16. In M/s. Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd., , the Apex Court held to the effect that although the Arbitration and Conciliation Act,

1996 came into force with effect from 22.8.1996 for all practical and legal purposes, vide Notification No. GSR 375(E) dated 22.8.1996

published in the Gazette of India, the said Act, being a continuation of the Arbitration and Conciliation ordinance, was to be taken to have been

effective from 25.1.1996 when the first ordinance came into force. The above said decision is not also of any help in deciding our present cases.

17. In Collector of Central Excise Vs. New Tobacco Co. Etc. Etc., , the Apex Court was dealing, inter-alia, with the question of coming into force

of certain central excise Notification, i.e., subordinate legislation and not the question of coming into force of the concerned Act itself. Accordingly,

the observation of the Apex Court in the said case at para 12 ""If the publication is through the gazette then mere printing of it in the gazette would

not be enough. Unless the gazette containing the Notification is made available to the public, the Notification cannot be said to have been duly

published"" is not of any help in our present cases. It is to be noted that the above said view of the Apex Court, which was followed in Garware

Nylons Ltd. Vs. Collector of Customs and Central Excise, Pune, , has been over-ruled in Food Corporation of India Vs. State of Haryana and

Another, by holding that the relevant Notification was operative from 4.2.1987 when it was printed in the gazette of the same date and that it was

not necessary to prove as to when the gazette was offered for sale or circulation. This decision implies that the date of the gazette, provided it is

not ante-dated, would be the date of publication in the gazette of all Notification appearing in it.

18. In Ahuja Industries Ltd. Vs. State of Karnataka and Others, , the Apex Court was not dealing with the question of coming into force of any

Act, the court was dealing with the question of validity of acquisition proceeding under the Karnataka Industrial Areas Development Act, 1966

with reference to the date of Notification under Sections 1(3), 3(1) and 28(1) of the said Act. According to the Apex Court, the date of

notification under the said sections for the purposes of considering the validity of the land acquisition proceeding is the date of their publication in

the official gazette and not any earlier date borne by them.

19. We are of the opinion that none of the above referred decisions dealing with the question of coming into effect of subordinate legislation is of

any help in deciding the question as to from which date the Nagaland Work-charged and Casual Employees Regulation Act, 2001 is to be said to

have come into force.

20. There may be different situations relating to coming into force of an Act either of the Parliament or the State legislature. An Act itself may

specify the date from which it is to come into force. An Act may even provide that it shall be deemed to have come into force with effect from the

date fixed therein which is much before the date on which the assent of the Governor/President is received. For example, the Nagaland

Interpretation and General Clauses Act, 1978 was assented by the Governor on 26.7.1979 but the said Act itself provides that it shall be deemed

to have come into force on the first day of December 1963 which is a date much before the date on which Governor gave his assent. Quite often,

the commencement of an Act is postponed to some specified future date mentioned in the Act or to such date as the appropriate Government may,

by Notification in the official gazette, appoint. The Nagaland Work-charged and Casual Employees Regulation Act, 2001 is an Act in which as per

Section 1(3) of the Act, the State Government is empowered to appoint the date for the commencement of the Act by Notification in the official

gazette. There are also Acts in which nothing is provided as to when they are to come into force. When an Act does not provide anything as to

when it is to come into force, one has to refer to either to the General Clauses Act, 1897 or the relevant State General Clauses Act as the case

may be. However, in our cases, since the Nagaland Work-charged and Casual Employees Regulation Act, 2001 itself provides that it shall come

into force from the date the State Government may, by Notification in the official gazette, appoint, there is no need of referring to the General

Clauses Act of the State of Nagaland.

21. In the light of the above discussions, we do not find any appreciable reason as to why the said Act of 2001 should not be taken as to have

come into force with effect from the 1st April, 2001 which is the date appointed by the State Government by Notification in the official gazette on

31.5.2001. Since the said Act of 2001 empowers the State Government and not any other authority to appoint the date for commencement of the

Act, only the date appointed by the State Government and not any other date should be taken as the date for commencement of the Act. We are

of the opinion that despite the fact that the Notification of the State Government appointing the 1st April, 2001 as the date for the commencement

of the Act was published in the official gazette only on 31.5.2001, the moment the Notification was published in the official gazette on 31.5.2001,

the Act should be taken to have come into force from the 1st April, 2001. This view is in consonance with the intention of the legislature that the

said Act must come into force from the date appointed by the State Government in the manner prescribed. While holding the above said view, we

have also taken into account of the nature of the said Act of 2001 which has purportedly been enacted to regulate appointment and conditions of

service of persons appointed as Work-charged and Casual Employees. Since the said Act of 2001 cannot also be considered as a penal statute or

fiscal statute imposing liability, no prejudice can be said to have been caused to the writ petitioners (the present respondents) when the said Act of

2001 is held to have come into force with effect from 1.4.2001 even though the Notification appointing the said date was published only on

31.5.2001. We may also refer to the decision of the Apex Court in the The State of Madhya Pradesh and Others Vs. Tikamdas, wherein, while

dealing with Section 63 of the M.P. Excise Act, the Apex Court observed ""But Sections 63 specifically states that "all rules made and notifications

issued under this Act shall be published in the Official Gazette, and shall have effect from the date of such publication or from such other date as

may be specified in that behalf." Clearly the Legislature has empowered its delegate, the State Government not merely to make the rules but to give

effect to them from such...be specified by the delegate. This provision regarding subordinate legislation does contemplate not merely the power to

make rules but to bring them into force from any previous date.

22. For the reasons given above, we hold that the said Act of Nagaland Work-charged and Casual Employees Regulation Act, 2001 came into

force with effect from 1st April, 2001. In our opinion, the decision of the learned Single Judge that the said Act came into force with effect from

31.5.2001 at the earliest and at the latest from 15.6.2001 is not acceptable in the eye of the law. In our opinion, no interference is called for in

respect of the said order dated 26.9.2002 which was challenged in the above referred writ petitions. We, accordingly, set aside the said decision.

23. In the result, we set aside the impugned common Judgment and Order passed on 21.4.2005 disposing of all the said writ petitions. These writ

appeals are allowed. No order as to costs.