

(2014) 02 KL CK 0033

High Court Of Kerala

Case No: W.A. No. 585 of 2013

Pareeth

APPELLANT

Vs

Kerala State Electricity Board

RESPONDENT

Date of Decision: Feb. 14, 2014

Acts Referred:

- Electricity (Supply) Act, 1948 - Section 79(j)
- Electricity Act, 2003 - Section 126, 127, 185, 185(1)
- General Clauses Act, 1897 - Section 6
- Motor Vehicles Act, 1988 - Section 217(2)(a)

Citation: (2014) 3 KLJ 106 : (2014) 2 KLT 258

Hon'ble Judges: Antony Dominic, J; Anil K. Narendran, J

Bench: Division Bench

Advocate: Anchal C. Vijayan, Advocate for the Appellant; P. Santhalingam, Sr. Advocate, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Antony Dominic, J.

The issue that is raised for consideration is the correctness of a proceeding initiated against the appellant under the Indian Electricity Act, 1910, which was upheld by the learned Single Judge. Bereft of the details which are irrelevant, facts of the case are that the appellant, who has established an industrial unit manufacturing plastic products, is an LT IV consumer of electricity supplied by the respondents. His premises were inspected by the A.P.T.S. of the Board on 14.3.2003 and was issued Ext. P3 bill Ext. P5 appeal filed by the appellant was disposed of by Ext. P6 order directing revision of the bill and accordingly, Exts. P7 to P9 were issued. It was in these circumstances the Writ Petition was filed challenging the aforesaid proceedings. The Writ Petition was dismissed and hence the appeal.

2. We heard the learned counsel for the appellant and the learned Senior Counsel for the Respondents and have considered the submissions made by both sides.

3. The contention urged by the counsel for the appellant was that the appellate authority erred in not disposing of the appeal, in the light of the provisions of the Electricity Act 2003, (hereinafter referred to as the "2003 Act", for short) which was brought into force with effect from 10.6.2003 and not the Electricity Act, 1910, which has been repealed. According to him, penalty was imposed invoking Clause 43 of the Conditions of Supply of Electrical Energy framed under S. 79(j) of the Electricity (Supply) Act, 1948 and that the levy could, at best, have been possible under S. 126 of the 2003 Act. To buttress his argument, counsel placed reliance on the Apex Court judgments in [Bansidhar and Others Vs. State of Rajasthan and Others, , Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., , Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others,](#) and [Gammon India Ltd. Vs. Spl. Chief Secretary and Others,](#) and the judgment of this Court in [K.S.E.B. Vs. Najeeb,](#).

4. To answer this contention, it is necessary to notice certain relevant dates, facts and statutory provisions. The premises of the appellant was inspected by the A.P.T.S. squad on 14.3.2003. Based on the findings and the report of the T.M.R., Pallom, on the basis that it made out a case of theft of electrical energy as provided under Clause 43 of the Conditions for Supply of Electrical Energy, penalty was levied and accordingly, bill was issued to the appellant on 17.3.2003. Aggrieved by the aforesaid proceedings, on 31.3.2003, the appellant filed Ext. P6 appeal, invoking the appellate remedy under Clause 48 of the Conditions of Supply of Electrical Energy, which was disposed of by Ext. P6 order dated 2.3.2005. It was in the meanwhile that with effect from 10.6.2003, the 2003 Act was brought into force.

5. It is trite that the penalty that will visit upon an offender is determined with reference to the law that prevailed at the time when the offence is committed. Therefore, even if there is a subsequent change of law, that cannot have any impact on the proceedings against the offender. This is pellucid from S. 6 of the General Clauses Act which enumerates, inter alia, that where any enactment is repealed, unless a different intention appears, the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed and any such investigation, legal proceeding or remedy may be instituted, continued or enforced. It was in such a context that in Gajraj Singh's case (supra), the Apex Court held that repeal of an enactment leads to the position that except as to transactions past and closed, as if the repealed Act had never existed and the effect thereof is to obliterate the Act completely from the record of the Parliament as if it had never been passed; it never existed except for the purpose of which were commenced, prosecuted and concluded while it was an existing law. The expression "transactions past and

closed" used in the above refers to the offence committed and not either to its penal consequences or the remedies that are pursued by the offender.

6. In the facts of this case, we have to now refer to S. 185 of the 2003 Act and see whether any different intention, as stated in S. 6 of the General Clauses Act, is appearing therein. In this context, S. 185(1) and (2)(a) alone being relevant, are extracted for easy reference;

185. Repeal and saving.-- (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.

(2) notwithstanding such repeal:-

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

7. While it is true that this provision takes care of the post 10.6.2003 Act scenario, the provisions of the repealed Act which are not inconsistent with the 2003 Act would survive only to the extent it is indicated in S. 185 and that too, only if proceedings are remaining inconclusive. As we have already noticed in the earlier part of this judgment, in so far as this case is concerned, the offence was committed, proceedings initiated were completed, penalty was levied and appeal was also filed by the appellant much prior to 10.6.2003, when the 2003 Act was brought into force. Further, a careful consideration of the provisions of the 2003 Act also does not persuade us to think that "any intention to the contrary" as contemplated in S. 6 of the General Clauses Act, is manifest in the provisions of the Act also.

8. The submission that appeal is a continuation of the proceedings and that therefore, change in law during the pendency of the appeal would govern the fate of the appeal is also without any substance. Though it is a fact that appeal is the continuation of the original proceedings, what the appellate authority is called upon to decide is the legality of the order appealed against. This, therefore, has to be by applying the law as stood at the time when the offence was committed and not when the appeal was decided. However, the legal position would have been different if the 2003 Act was either declaratory in nature or is one which is retrospective in operation. (See in this context [Shyam Sunder and Another Vs. Ram Kumar and Another](#), and [Pirithi Vs. Mohan Singh and Others](#), . In such a case, even if the 2003 Act was brought into force during the pendency of the appeal, it could have been justifiably contended that 2003 Act would govern the matter. Provisions

of the 2003 Act leave no doubt in our mind that both the aforesaid requirements are not satisfied in this case to sustain the contention.

9. The contention of the appellant, who only stood to gain from the appellate order, that the appeal should have been dealt with in accordance with the 2003 Act is, in our view, a self-destructive one. He filed the appeal before the second respondent, invoking Clause 48 of the Conditions of Supply. If the appeal was to be dealt with under the 2003 Act, the appeal should have been filed under S. 127 of the 2003 Act and to the authority specified therein, which was not only not done, but was also not possible, at the time when the appeal was filed on 31.3.2003, since the 2003 Act was not even in force.

10. We shall now proceed to consider whether the judgments relied on by the counsel for the appellant lay down any principle that supports the proposition canvassed by him. *Bansidhar (supra)* was a case where a part of the Rajasthan Tenancy Act 1955 was repealed and new provisions were introduced with effect from 1.1.1973 by an Ordinance. The Ordinance was replaced by an Act of 1973 and S. 40 thereof provided for repeal and savings. High Court rejected the contention that pending proceedings would be governed by the Act as amended. In the appeal, the Apex Court rejected the contention and held thus;

21. When there is a repeal of a Statute accompanied by re-enactment of a law on the same subject, the provisions of the new enactment would have to be looked into not for the purpose of ascertaining whether the consequences envisaged by Section 6 of the General Clauses Act ensued or not - Section 6 would indeed be attracted unless the new legislation manifest a contrary intention - but only for the purpose of determining whether the provisions in the new Statute indicate a different intention. Referring to the way in which such incompatibility with the preservation of old rights and disabilities, is to be ascertained this Court in *State of Punjab v. Mohar Singh* said:

Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. The provisions of S. 6 of the General Clauses Act will apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment. Of course, the consequences laid down in Section 6 of the Act will apply only when a statute or regulation having the force of a statute is actually repealed.

11. *Gajraj Singh (supra)* was a case that arose under the Motor Vehicles Act, 1988 and the issue raised was whether, in view of S. 217(2)(a) of the Act, holders of permits issued under the Motor Vehicles Act, 1939 were required to obtain fresh permits. In this judgment, dealing with the effect of repealed Statute, it was held thus;

22. Whenever an Act is repealed it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act

completely from the record of the Parliament as if it had never been passed it, it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was existing law. Legal fiction is one which is not an actual reality and which the law recognises and the Court accepts as a reality. Therefore, in case of legal fiction the Court believes something to exist which in reality does not exist. It is nothing but a presumption of the existence of the State of affairs which in actuality is non-existent. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under the circumstances. Therefore, when Section 217(1) of the Act repealed Act 4 of 1939 w.e.f. July 1, 1989 the law in Act 4 of 1939 in effect came to be non-existent except as regards the transactions, past and closed or saved.

23. In Crawford's Interpretation of Law (1989) at page 626, it is stated that:

An express repeal will operate to abrogate an existing law, unless there is some indication to the contrary, such as a saving clause. Even existing rights and pending litigation, both civil and criminal, may be affected although it is not an uncommon practice to use the saving clause in order to preserve existing rights and to exempt pending litigation.

At page 627, it is stated that:

Moreover, where a repealing clause expressly refers to a portion of a prior Act, the remainder of such Act will not usually be repealed, as a presumption is raised that no further repeal is necessary, unless there is irreconcilable inconsistency between them. In like manner, if the repealing clause is by its terms confined to a particular Act, quoted by title, it will not be extended to an act upon a different subject". Section 6 of the G.C. Act enumerates, inter alia, that where the Act repeals any enactment, unless a different intention appears, the repeal shall not (a) revive anything not in force or existing at the time at which the repeal takes effect; or (b) affect the previous operation of any enactment so repealed of anything duly done or suffered thereunder; or (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced. In [India Tobacco Co. Ltd. Vs. The Commercial Tax Officer, Bhavanipore and Others,](#), a Bench of three Judges had held that repeal connotes abrogation and obliteration of one Statute by another from the Statute book as completely as if it had never been passed. When an Act is repealed, it must be considered, except as to transactions past and closed, as it had never existed, Repeal is not a matter of mere form but is of substance, depending on the intention of the Legislature. If the intention indicate either expressly or by necessary implication in the subsequent Statute was to abrogate or wipe off the former enactment wholly or in part, then it would be a case of total or pro tanto repeal.

12. Canesugar Works Ltd. (supra) was a case where after show cause notice dated 27.4.1977 for recovery of an erroneously granted rebate on excess production of sugar and before the order was passed, the rules relied on by the Department were substituted and a period of limitation was introduced. Question raised before the Apex Court was whether, after the new rules were introduced, proceedings initiated under the show cause notice dated 27.4.1977 could be continued. The issue was answered in favour of the Department and the Apex Court held thus;

34. For the reasons set forth above we do not accept the view taken in Saurashtra Cement and Chemical Industries Ltd. (1993 (42) ECC 126) (Guj.) (F.B.) (supra), in [Falcon Tyres Ltd. Vs. Union of India](#), and the other decisions taking similar view. It is not correct to say that in considering the question of maintainability of pending proceedings initiated under a particular provision of the rule after the said provision was omitted the Court is not to look for a provision in the newly added rule for continuing the pending proceedings. It is also not correct to say that the test is whether there is any provision in the rules to the effect that pending proceedings will lapse on omission of the rule under which the notice was issued. It is our considered view that in such a case the Court is to look to the provisions in the rule which has been introduced after omission of the previous rule to determine whether a pending proceeding will continue or lapse. If there is a provision therein that pending proceeding shall continue and be disposed of under the old rule as if the rule has not been deleted or omitted then such a proceeding will continue. If the case is covered by Section 6 of the General Clauses Act or there is a pari materia provision in the Statute under which the rule has been framed in that case also the pending proceeding will not be affected by omission of the rule. In the absence of any such provision in the Statute or in the rule the pending proceedings would lapse on the rule under which the notice was issued or proceeding was initiated being deleted/omitted. It is relevant to note here that in the present case the question of divesting the Revenue of a vested right does not arise since no order directing refund of the amount had been passed on the date when Rule 10 was omitted.

13. Gammon India Ltd. (supra) was a case where the only issue raised was whether the Assistant Commissioner of Commercial Taxes could initiate proceedings under the Andhra Pradesh General Sales Tax Act after its repeal. Upholding the jurisdictional competence of the Assistant Commissioner to initiate the proceedings, the Apex Court held thus;

73. On critical analysis and scrutiny of all relevant cases and opinions of learned authors, the conclusion becomes inescapable that whenever there is a repeal of an enactment and simultaneous re-enactment, the re-enactment is to be considered as reaffirmation of the old law and provisions of the repealed Act which are thus re-enacted continue in force uninterruptedly unless the re-enacted enactment manifests an intention incompatible with or contrary to the provisions of the repealed Act. Such incompatibility will have to be ascertained from a consideration

of the relevant provisions of the re-enacted enactment and the mere absence of the saving clause is, by itself, not material for consideration of all the relevant provisions of the new enactment. In other words, a clear legislative intention of the re-enacted enactment has to be inferred and gathered whether it intended to preserve all the rights and liabilities of a repealed statute intact or modify or to obliterate them altogether.

14. That leaves us with this court's judgment in Najeeb's case (supra). This judgment was cited to contend that in this case the Board was directed that the proceedings initiated under the 1910 Act be continued under the 2003 Act. However, facts noticed in the judgment would show that though the premises were inspected on various occasions, proceedings were initiated following an inspection conducted on 2.10.2004 and though, by that time, the 2003 Act was implemented, penal bill was issued in terms of Clause 42(d) of the Conditions of Supply of Electrical Energy. The contention accepted by this court was that the proceedings should be governed by 2003 Act. The ratio of the above judgments does not, in any manner, suggest our conclusions to be erroneous nor does it support the contentions urged.

Therefore, we reject the arguments raised and consequently, the Writ Appeal is dismissed. No costs.