

Anil Kumar Bhuinya Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: Dec. 6, 2005

Acts Referred: Electricity (West Bengal Amendment) Act, 2001 â€” Section 39F, 39G, 39G(2), 39P

Electricity Act, 1910 â€” Section 39

Electricity Act, 2003 â€” Section 135, 136, 137, 138, 139

Evidence Act, 1872 â€” Section 113A

General Clauses Act, 1897 â€” Section 6

Penal Code, 1860 (IPC) â€” Section 379

Citation: (2006) 1 CHN 672

Hon'ble Judges: P.N. Sinha, J

Bench: Single Bench

Advocate: Arup Kumar Chatterjee and Pravas Bhattacharjee, for the Appellant; Rajib Bose, for the Respondent

Final Decision: Dismissed

Judgement

P.N. Sinha, J.

This revisional application has been preferred by the petitioner assailing the order dated 19-2.05 passed by the learned

Additional Sessions Judge-cum-Special Court, Midnapore (West) under Indian Electricity Act (in short I.E. Act) in connection with I.E. Act Case

No. 231/04 arising out of Daspur P.S. Case No. 127/96 for alleged offence punishable u/s 39 of the I.E. Act, 1910 read with Section 379 of the

Indian Penal Code (in short IPC) and praying for direction that the said case should be tried by competent Magistrate.

2. Mr. Arup Chatterjee, learned Advocate for the petitioner submitted that initially the case was started against this petitioner in the year 1996 u/s

39 of the then Indian Electricity Act, 1910 (since repealed) read with Section 379 of the IPC arising out of Daspur P.S. Case No. 127 dated

24.4.96. In the said case one witness was examined before the new Electricity Act, 2003 came into force w.e.f. 15.7.02. According to Section

154 of the new Act, the offences as mentioned in Sections 135 to 139 of the Act of 2003 are triable by the Special Court. Against the accused

charge was framed u/s 39 of the Indian Electricity Act read with Section 379 of the IPC. The accused petitioner, therefore, cannot be tried for any

offence under Sections 135 to 139 of the Electricity Act, 2003.

3. Mr. Chatterjee further submitted that the point of law involved in this matter is, whether Special Court or, the learned Special Judge has

jurisdiction to try the case when the offence occurred in 1996 u/s 39 of the Indian Electricity Act, 1910. When charge was already framed u/s 39

of the Indian Electricity Act, 1910 and one witness was examined before promulgation of the new Electricity Act, 2003, the accused petitioner

cannot be tried by the Special Court. Section 6 of the General Clauses Act will not cure the defect. The learned Special Court has wrongly

interpreted Section 6 of the General Clauses Act. The right of the accused petitioner to be tried by the Magistrate for his alleged offence in 1996

when Indian Electricity Act, 1910 was in force cannot be curtailed by application of Section 6 of the General Clauses Act. It is the settled principle

of law that every procedural law has retrospective effect unless there is any special indication in the Act laying down when the said Act would

become effective or that the new Act has prospective effect. The accused did not commit any offence under Sections 135 to 139 of the Electricity

Act, 2003 and the said Act came into force w.e.f. 15.7.02. He, therefore, cannot be tried for any of the offences under the aforesaid sections of

the Electricity Act, 2003 by the learned Special Judge. The accused is entitled to be tried under the provisions of old Electricity Act of 1910 and

he should be tried by a Magistrate. In support of his contention Mr. Chatterjee cited the decision in Gurbachan Singh v. Satpal Singh reported in

1990 SCC 151.

4. Mr. Rajib Bose, learned Advocate appearing for the State submitted that Section 185(2)(a) of the Electricity Act, 2003 is important. The action

has already been taken and in view of the provisions of Section 185(5), the Special Court has jurisdiction to try the case. Section 6(e) of the

General Clauses Act is clearly applicable in this matter and in view of the Sub-clause (e) of Section 6 of the General Clauses Act legal proceeding

which has already been started shall not be affected due to the repealing of the I.E. Act, 1910. In view of Section 6(e) of General Clauses Act it

would be presumed that the investigation, legal proceeding or remedy may be instituted or continued or enforced and any such penalty, forfeiture

or punishment may be imposed as if the repealing Act or Regulation had not been passed.

5. Mr. Bose further submitted that there is no saving clause in the Electricity Act, 2003. When the old Act has already been repealed question of

trial by a Magistrate under the Electricity Act, 1910 does not arise at all. The learned Magistrate has no jurisdiction to try any offence under Indian

Electricity Act, 1910. In view of Section 154 of the Electricity Act, 2003 only the Special Courts can now try offences punishable under Indian

Electricity Act. When everything is going ahead in this country in every sphere of life why the petitioner should go back to old age and old system

and would claim to be tried by a Magistrate. There is no defect or illegality in the order of the learned Special Judge, The said order requires no

interference and the revisional application should be dismissed.

6. From the submissions of the learned Advocates for the parties and the contents of the revisional application and annexures made thereto, it is

undisputed that the petitioner was made an accused in connection with Daspur P.S. Case No. 127 dated 24.4.96 u/s 39 of the Electricity Act,

1910 and Section 379 of the IPC. The said case ended in submission of chargesheet and it was pending before the Court of learned SDJM,

Ghatal. The submission of Mr. Chatterjee, learned Advocate for the petitioner also reveals that one witness was examined before the new

Electricity Act, 2003 came into operation w.e.f. 10.6.03. In view of the provisions of the Electricity Act, 2003 the case was transferred to the

Special Court from the Court of the learned SDJM, Ghatal. The petitioner filed an application claiming trial before the learned Magistrate

contending that the alleged offence was committed in the year 1996 when the Electricity Act, 1910 was in force and the present Electricity Act of

2003 was not in existence. The charge was framed u/s 39 of the Indian Electricity Act, 1910 and Section 379 of the IPC. In the Electricity Act,

2003 the penal provisions are Sections 135 to 150 of the Act. The offence relating to theft of electricity, theft of electric lines and materials,

interference with meters and breaking or damaging works or cutting of supply of electricity are provided in Sections 135 to 140 of the Electricity

Act, 2003. It is the contention of the petitioner that as the allegation against him is for commission of offence u/s 39 of the Indian Electricity Act,

1910 and u/s 379 of IPC he cannot be tried by the Special Court as the new Indian Electricity Act prescribes trial in Special Court.

7. After considering the entire matter and going through the provisions of Indian Electricity Act, 1910, Electricity Act, 2003 and the General

Clauses Act, I am unable to accept the submissions made by Mr. Chatterjee, the learned Advocate for the petitioner. There is no saving clause in

the Electricity Act, 2003 but Section 185 makes it clear that the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 are hereby

repealed. Section 185(2)(a) prescribes that notwithstanding such repeal anything done or any action taken or purported to have been done or

taken including any rule, notification, inspection, order or notice made etc. under the repealed law shall, in so far 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. Section 185(2)(5) prescribes that

Save as otherwise provided in Sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general

application of Section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals." It makes clear, therefore, that Section

6 of the General Clauses Act would be applicable in relation to matters prescribed in Sub-section (2) of Section 185 with regard to the effect of

repeals.

Section 6 of the General Clauses Act runs as follows:

6. Effect of repeal.--Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto

made or thereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) ...

(b) ...

(c) ...

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment

as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or

punishment may be imposed as if the repealing Act or Regulation had not been passed.

8. If I construe the effect of Section 6(d) and Section 6(e) of the General Clauses Act properly the position which becomes clear is that, any

investigation, legal proceeding may be instituted, continued or enforced, and any penalty, forfeiture or punishment may be imposed as if the

repealing Act had not been passed. The simple meaning is that in view of the provisions of Section 6 of the General Clauses Act, the legal

proceeding which was pending may be continued in view of the provisions of the new Act taking into consideration as if the repealed Act was not

there and was not passed. Therefore, the criminal proceeding which was pending before the learned SDJM, Ghatal against this petitioner under the

Indian Electricity Act, 1910 may be continued, proceeded with in view of the provisions of Electricity Act, 2003 with the aid of Section 6 of the

General Clauses Act read with Section 185(5) of the Electricity Act, 2003.

9. The submission of Mr. Chatterjee that all procedural laws has retrospective effect would not save the petitioner in the instant matter. Mr.

Chatterjee in support of his submission cited the decision in Gurbachan Singh v. Satpal Singh and Ors. reported in 1990 SCC151. I agree with the

ratio of the principle of law laid down in this decision that Section 113A of the Evidence Act does not create any new offence and as such it does

not create any specific right but it is merely a matter of procedure of evidence and as such it is retrospective and will be applicable to this case.

This decision makes it clear that the procedural laws have retrospective effect and not prospective effect. Admitting this position of law, I make it

clear that Electricity Act, 2003 is not a procedural law. The Electricity Act, 2003 is the substantive law relating to offence under Electricity Act.

The procedural law are the Criminal Procedure Code, the Evidence Act etc. The Indian Electricity Act lays down for which particulars an offence

may constitute and Criminal Procedure Code lays down the procedure of trial. The submission that the Electricity Act, 2003 is a procedural law

and has retrospective effect has no foundation at all and this submission is not tenable. Electricity Act, 2003 is the substantive law and not

procedural law.

10. Moreover, from other analogy the contention of the petitioners is not acceptable. It is true that Sections 153 and 154 of the Electricity Act,

2003 lays down the provisions of constitution of Special Courts and the power of Special Court but before the promulgation of Electricity Act,

2003, Special Courts were constituted in view of the Indian Electricity (West Bengal Amendment) Act, 2001 which was published in the Kolkata

Gazette, Extraordinary Part III dated 24th April, 2003. The Electricity (West Bengal Amendment) Act, 2001 came into force prior to introduction

of Indian Electricity Act, 2003. Section 39F of the West Bengal Amendment Act lays down formation or constitution of Special Courts. Section

39G of the said Act lays down procedure and powers of Special Court. The said section lays down that notwithstanding anything contained in the

Criminal Procedure Code and the Indian Electricity Act, 1910 every offence punishable under any provisions of this Act or any rule made

thereunder shall be triable only by Special Court within whose jurisdiction such offence has been committed, whether before or after constitution of

such Special Court.

11. Section 39G(2) lays down that all cases involving offence, punishable under any provision of this Act and pending before any Court, shall, on

constitution of a Special Court having jurisdiction over such cases, shall stand transferred to such Special Court. In view of the provisions of

Sections 39P and 39G of the Indian Electricity (West Bengal Amendment) Act, the offences under the Electricity Act are to be tried by Special

Court and all the cases pending before any Court shall stand transferred to Special Court. Even if I take into consideration that petitioner is to be

guided under the Indian Electricity Act, 1910 the abovementioned West Bengal Amendment Act makes it clear that the alleged offence is triable

by Special Court. In view of the provisions of the said Act all the cases which were pending in other Courts shall stand transferred to the Special

Court, and on this analogy, the present case against petitioner which was pending before the learned SDJM, Ghatal was transferred to the learned

Special Court. Therefore, even brushing aside provisions of Electricity Act, 2003, the petitioner is entitled to be tried by Special Court in view of

provisions of West Bengal Amendment of Indian Electricity Act, 1910. The petitioner cannot claim to be tried by the learned Magistrate.

12. The petitioner cannot blow both hot and cold at same breath. The desire of petitioner is to have the trial before the learned Magistrate in view

of the I.E. Act, 1910. It has been mentioned above that Special Courts were constituted in view of Section 39F of the I.E. (West Bengal

Amendment) Act, 2001. Section 39G of the said amendment Act clearly lays down that all the cases pending before any Court shall stand

transferred to such Special Court. So, in view of provisions of Indian Electricity Act, 1910 read with the effect of West Bengal Amendment Act of

2001, the Special Court is now the only Court which can now try cases relating to offence under Electricity Act. Even if it is argued that West

Bengal Amendment Act, 2001 has no force after enactment of Electricity Act, 2003, the petitioner is still triable by the Special Court under

provisions of Electricity Act, 2003 in view of provisions of Section 185(5) of the said Act read with the application of Section 6 of the General

Clauses Act. When there is repeal of an Act, the consequences laid down in Section 6 of the General Clauses Act will follow unless in the section

and in the Act a different intention appears. I do not find any different intention in the Electricity Act, 2003 and when repeal of an Act is followed

by fresh enactment of Indian Electricity Act on the same subject and contrary intention do not appear therein, the repeal shall not affect any way all

the. legal proceedings, investigation or remedy in respect of any such right, privilege, obligation, liability, penalty, punishment etc. and all legal

proceedings, investigation, remedy may be continued as if the repealing Act had not been passed. Due to repeal of the Indian Electricity Act, 1910

the proceedings of pending case under the former Act do not lapse and the said cases now should be tried by the Special Courts.

13. It cannot be argued that after enactment of Electricity Act, 2003, the I.E. (West Bengal Amendment) Act, 2001 lost its force and was

repealed. The Government by issuing notification being No. 685-J/X dated 17th November, 2003 made the position more clear and the said

notification envisages that all the Judges of the Special Courts are empowered to try all offences under the Indian Electricity (West Bengal

Amendment) Act, 2001 also in terms of Section 153 of the Electricity Act, 2003. The said notification runs as follows:

The Governor has been pleased to accord sanction to the retention of the existing 24 (twenty-four) Special Courts under Essential Commodities

(Special Provisions) Act, 1981 permanently w.e.f. 01.09.2003.

2. The Governor has been further pleased to accord sanction to the conversion of those 24 (twenty-four) Special Courts as the Courts of

Additional District & Sessions Judges.

3. The Governor has been again pleased to empower 19 (nineteen) members of those converted Additional District & Sessions Judges Courts

which have now been functioning at every Sadar Sub-Division of each District in West Bengal including the 1st Special Court, Calcutta to try

offences exclusively under the Indian Electricity (West Bengal Amendment) Act, 2001 as well as in terms of Section 153 of the Electricity Act,

2003 (36 of 2003) having territorial jurisdiction for the entire district.

4. This issues with the occurrence of Finance (Audit) Department vide their U.O. No. 1335-(Group-"L") dated 15.9.2003 and also with the

concurrence of the High Court, Calcutta.

5. This issues in cancellation of this Department's Notification Nos.616-J/X dated 13.10.2003 & 6592-J/Xdt. 22.10.03.

By order of the Governor

Sd-

Spl. Secy, to the Govt. of West Bengal

Judicial Department

14. The above notification makes it clear that all the existing Special Courts in every district are empowered to try offences exclusively under the

Indian Electricity (West Bengal Amendment) Act, 2001 as well as in terms of Section 153 of the Electricity Act, 2003 having territorial jurisdiction

for the entire district.

15. In view of the present position and in view of the discussion made above I am opinion that the learned Additional Sessions Judge-cum-Indian

Electricity Act, Midnapore (West) by the impugned order made no illegality or gross irregularity rejecting the application of the accused petitioner

challenging maintainability of the continuation of the said case in the said Court. This Court finds that the order" passed by the learned Judge,

Special Court was correct, legal and proper and the said order requires no interference. The revisional application accordingly having no merit is

dismissed and disposed of in the light of the observation made above.

16. All interim orders passed earlier stand vacated.

17. Since this is a very old case of 1996, the learned Judge, Special Court (I.E. Act), Midnapore (West) is directed to expedite the hearing of the

said case and to ""dispose of the same at the earliest without granting any undue adjournment to either of the parties.

18. Criminal Department is directed to send a copy of this order to the learned Additional Sessions Judge-cum-Special Court (Indian Electricity

Act), Midnapore (West) for information and necessary action.

Later:

19. Urgent xerox certified copy be given to the parties, if applied for, expeditiously.