K. S. Dharmadatan

Vs

Central Government and Others

Criminal Appeal No. 362 of 1975

(Syed M. Fazal Ali, P. S. Kailasam JJ)

01.05.1979

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against the judgment and order of the high Court of Kerala dated July 11, 1975 dismissing a criminal revision petition filed by the appellant before the High Court.

2. The point involved in the present appeal lies within a very narrow compass. The appellant was being prosecuted for offences under Section 120-B, 420, 471 and 468, read with Section 34, IPC, Section 167(72) of the Sea Customs Act and Section 5 (2) read with Section 5(1)(d) of the Prevention of Corruption Act. At the time when the charge-sheet was filed and the Special Judge took cognizance against the appellant some time in October, 1970, the appellant ceased to be a public servant and, therefore, no sanction under Section 6 of the Prevention of Corruption Act (hereinafter referred to as the Act) was obtained. It appears that in pursuance of departmental enquiry held against the appellant he was charge-sheeted and ultimately dismissed by the appointing authority. Thereafter, the appellant filed an appeal before the appointing authority. Thereafter, the appellant filed an appeal before the President of India on October 18, 1967 against his removal from service. After consulting the Union Public Service Commission the President by his order dated September 25, 1972 allowed the appeal and set aside the order of removal from service passed by the Collector of Customs against the appellant. The order of the President further directed that the period of absence from September 5, 1967 till the date of reinstatement was to be treated as under suspension. The appeal appears to have been allowed by the President mainly on the ground that there was some defect in the charge-sheet served by the disciplinary authority. The disciplinary authority was directed to institute de novo proceedings against the appellant after rectifying the defect in the charge-sheet. While these proceedings before the President were going on, the trial against the appellant proceeded to its logical end and we now understand that evidence has already been led and the arguments have to be heard.

3. The appellant on being reinstated by the President filed an application before the Special Judge praying that all further proceedings be dropped inasmuch as the prosecution against the appellant was initiated in the absence of a proper and valid sanction having been obtained under Section 6 of the Act. The Special Judge, however, rejected the petition as a result of which the appellant moved the High Court but was not successful there.

4. The only point raised by the appellant before the High Court as also before us was that in view of the order of the President reinstating the appellant retrospectively, the appellant must be deemed to

be in service with effect from the date from which the departmental proceedings were started against him, and, therefore, he would be a public servant at the time when cognizance was taken by the Special Judge, and as no sanction under Section 6 of the Act was obtained, the entire proceedings became void ab initio. Mr. Sorabjee appearing for the respondents has submitted that admittedly and factually at the point of time when the Special Judge took cognizance of the case on October 14, 1970, the appellant having been dismissed from service was no longer a public servant, and, therefore, Section 6 of the Act had no application. Section 6 of the Act runs thus :

> 6(1). No court shall take cognizance of an offence punishable under Section 161 or Section 164 or Section 165 of the Indian Penal Code, or under sub-section (2) or sub-section (3A) of Section 8 of this Act, alleged to have been committed by a public servant, except with the previous sanction :
>
> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the State Government or of the Central Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the Central Government or of the State Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office.

5. A perusal of this section would clearly disclose that the section applied only where at the time when the offence was committed the offender was acting as a public servant. If the offender had ceased to be a public servant then Section 6 would have no application at all. Furthermore, it is also manifest from the perusal of Section 6 that the point of time when the sanction has to be taken must be the time when the court takes cognizance of an offence and not before or after. If at the relevant time, as indicated above, the offender was not a public servant no sanction under Section 6 was necessary at all.

6. Construing Section 6 of the Act this Court in the case of S. A. Venkataraman v. State (1858 SCR 1040 : AIR 1958 SC 107 : (1958) 2 LLJ 1 : 1958 Cri LJ 254) pointed out as follows :

> When the provisions of Section 6 of the Act are examined it is manifest that the two conditions must be fulfilled before its provisions become applicable. One is that the offences mentioned therein must be committed by a public servant and the other is that the person is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government or is a public servant who is removable from his office by any other competent authority. Both these conditions must be present to prevent a court from taking cognizance of an offence mentioned in the section without the previous sanction of the Central Government or the State Government or the authority competent to remove the public servant from his office. If either of these conditions is lacking, the essential requirements of the section are wanting and the provisions of the section do not stand in the way of a court taking cognizance without a previous sanction ..... Conversely, if an offence under Section 161 of the Indian Penal Code was committed by a public servant, but at the time a court was

> asked to take cognizance of the offence, that person had ceased to be a public servant one of the two requirements to make Section 6 of the Act applicable would be lacking and a previous sanction would be unnecessary. The words in Section 6(1) of the Act are clear enough and they must be given effect to.

7. To the same effect is a later decision of this Court in the case of C. R. Bansi v. State of Maharashtra ((1970) 3 SCC 537 : 1971 SCC (Cri) 143 : (1971) 3 SCR 236).

8. In view of the observations referred to above, it is manifest that as the appellant had ceased to be a public servant at the time when the cognizance of the case was taken against him by the Special Judge no sanction under Section 6 of the Act was necessary.

9. It was, however, argued by Mr. Swaminadhan, learned Counsel for the appellant that the logical consequence of the order of the President reinstating the appellant was that he would be deemed to have been put back into service on the date the charge-sheet was submitted against him, and, therefore, he must be deemed to be a public servant within the meaning of Section 6 of the Act. In other words, the learned Counsel wanted us to import a legal function arising from the Presidential order by which even though factually the appellant may not have been a public servant at the time when the cognizance was taken, he would be deemed to be so by virtue of the Presidential order even though, he would be deemed to be so by virtue of the Presidential order even though the Presidential order may have been passed years after the cognizance was taken. We are however unable to agree with the somewhat broad arguments advanced by the learned Counsel for the appellant.

10. To begin with, the dismissal of the appellant was not a nullity so as to vitiate all proceedings previous or subsequent. It was merely an order passed by the President in an appeal and the appellant succeeded because of a manifest defect in the charge-sheet. The order passed by the President was therefore not an order on merits. There is nothing to show that the President was therefore not an order on merits. There is nothing to show that the President ever intended that the appellant should be deemed to have been reinstated even for the purpose of Section 6 of the Act so as to nullify actions completed, consequences ensued or transactions closed. In fact, when the President observed that the appellant shall be deemed to have been placed under suspension from the date of the original order of dismissal it merely meant that for the purpose of certain civil consequences flowing from the order of the President, namely, the grant of subsistence allowance or other benefits the order would be deemed to be retroactive in character. It is well settled that a deeming provision cannot be pushed too far so as to result in a most anomalous or absurd position.

11. In the case of C. S. T., Uttar Pradesh v. Modi Sugar Mills Ltd. ((1961) 2 SCR 189 : AIR 1961 SC 1047 : (1961) 12 STC 182) while laying down the principles on the basis of which a deeming provision should be construed this Court observed as follows :

> A legal fiction must be limited to the purposes for which it has been created and cannot be extended beyond its legitimate field.

12. Similarly in the case of Braithwaite & Co. (India) Ltd. v. Employees' State Insurance Corporation ((1968) 1 SCR 771 : AIR 1968 SC 413 : (1968) 1 LLJ 550) this Court further amplifying the principle of the construction of a deeming provision observed thus :

> A legal fiction is adopted in law for a limited and definite purpose only and there is

> no justification for extending it beyond the purpose for which the legislature adopted.

In the Bengal Immunity Co. Ltd. v. State of Bihar ((1955) 2 SCR 603 : AIR 1955 SC 661 : 1955 SCJ 672) this Court pointed out that "explanation should be limited to the purpose the Constitution-makers had and legal fictions are created only for some definite purpose".

13. In the case of C. I. T., Bombay City v. Elphinstone Spinning and Weaving Mills Co. Ltd. (40 ITR 142 : (1960) 3 SCR 953 : AIR 1960 SC 1016 : (1961) 1 SCJ 158) this Court observed as follows :

> As we have already stated, this fiction cannot be carried further than what it is intended for.

14. Thus, it is well settled that a deeming fiction should be confined only for the purpose for which it is meant. In the instant case, the order of the President reinstating the appellant and creating a legal fiction regarding the period of suspension must be limited only so far as the period of and the incidents of suspension were concerned and could not be carried too far so as to project it even in cases where actions had already been taken and closed. In other words, the position seems to be that at the time when actual cognizance by the court was taken the appellant had ceased to be a public servant having been removed from service. If some years later he had been reinstated that would not make the cognizance which was validly taken by the court in October, 1970 a nullify or render it nugatory so as to necessitate the taking of a fresh sanction. We, therefore, entirely agree with the view taken by the High Court that in the facts and circumstances of the present case legal fiction arising out of the Presidential Order cannot be carried to nullify the order of cognizance taken by the Special Judge. The argument of the learned Counsel for the appellant is, therefore, overruled. No other point was pressed before us. The appeal being without merit is accordingly dismissed. The Special Judge would now hear the arguments of the parties and dispose of the case as would now hear the arguments of the parties and dispose of the case as expeditiously as possible. Let the records be sent back to the Special Judge immediately.

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