

Bhagwan Dass Chopra

Vs

United Bank of India and Others

Civil Appeal No. 2984 of 1987

(E. S. Venkataramiah, K. N. Singh JJ)

17.11.1987

JUDGMENT

VENKATARAMIAH, J. –

1. The appellant joined the service of the Narang Bank of India Ltd., New Delhi on July 12, 1974 as a Clerk-cum-Typist and was confirmed in his service on October 1, 1974. The Narang Bank of India Ltd., however, terminated his services on February 10, 1975 without assigning any reason. On the industrial dispute being raised the Central Government by its order dated July 9, 1975 referred the following dispute to the Central Government industrial Tribunal of adjudication :

Whether the action of the management of the Narang Bank of India, New Delhi in terminating the services of Shri Bhagwan Dass Chopra w.e.f. February 10, 1975 is justified ? If not, what relief is the said workman entitled to ?

2. The claim made by the appellant was disputed by the management. On the basis of the pleadings filed by the parties the Industrial Tribunal framed issues and directed the parties to lead evidence. In the course of the trial the appellant examined himself and he was cross-examined by the representative of the Narang Bank of India Ltd. Thereafter the evidence of the appellant was closed on May 21, 1976. On July 25, 1976 the Narang Bank of India Ltd. entered into an agreement with the United Bank of India, respondent 1 herein, whereunder all the assets and liabilities of the Narang Bank of India Ltd. were taken over by the Union Bank of India, respondent 1. The employees of the erstwhile Narang Bank of India Ltd. became the employees of the United Bank of India, respondent 1 by virtue of Clause 20 of the said agreement. The relevant part of Clause 20 read thus :

20(a) The transferee shall be under an obligation to take over and absorb and retain with effect from August 1, 1976 in its employment such staff, employees and assistants (hereinafter called "the said employees") of the transferor or employed by the transferor in relation to or in connection with the said banking business intended to be taken over or acquired by the transferee as aforesaid who were permanent employees of the transferor on the said date and on the same terms and conditions including the remuneration and wages and/or other lawful claims as were or are applicable or payable to them on the said date subject to the terms and conditions as contained in the Third Schedule hereto : Provided always that such taking over or absorption of the staff and employees of the transferor by the transferee on the same terms and conditions as hereinbefore mentioned and/or also referred to or otherwise mentioned in the Third Schedule hereto shall not however be so construed as to

include or extend to their or each of their rank and status.

(b) The transferee shall not, however, be bound to take over or absorb in their employment - (i) all such staff, assistants and employees against whom any show cause notice or any action (penal or otherwise) or any enquiry or any actions and/or proceedings whatsoever are pending on the said date by the management or by any tribunal court or otherwise and/or who are on the said date involved or figuring in any such enquiries, actions and/or proceedings and against whom any adverse or suspension order, finding or decision has been passed or is likely to be passed prior or subsequent to the said date. (ii) Any such staff employees and assistants of the transferor whose services have been terminated by the transferor on or before the said date and/or against whom any adverse or suspension order finding or decision has been passed by any person holding any enquiry and/or management of the transferor and/or by any court, tribunal or otherwise subsequent to the said date but prior to the formal taking over of the said business or assets or properties of the transferor by the transferee on the basis of this agreement.

Provided nevertheless the transferee shall take over suspended employee, if any, of the transferor relating to the said business with effect from the said date and/or condition as hereinbefore mentioned in Clause 20(a) above insofar as the same shall be applicable if and only if such employee/employees is or are finally and ultimately absolved/exonerated or acquired from or of all the charges levelled against him/them.

3. On August 1, 1976 the Narang Bank of India Ltd. was totally merged with the United Bank of India. On August 2, 1976 three witnesses gave evidence on behalf of the former Narang Bank of India Ltd., two of whom were employees of the United Bank of India Ltd. by virtue of the agreement of merger referred to above. On September 20, 1976 two more witnesses were examined of whom one witness was a former officer of the Narang Bank of India Ltd. On that date the appellant made an application for permission to implead the United Bank of India also as a party in view of the merger which had taken place. The United Bank of India took time till November 5, 1976 to file its reply to the application made by the appellant. The evidence of the Narang Bank of India Ltd. was, however, closed on November 5, 1976. The United Bank of India sought further time to file a reply to the appellant's application. That reply was filed on November 10, 1976. After hearing arguments on the application the Tribunal directed that the United Bank of India should be impleaded as a party and also gave time to the appellant to file an amended statement of claim. The term of the Presiding Officer having expired on December 1, 1976, a Presiding Officer was appointed in July 1977. On December 1, 1977 the United Bank of India filed its written statement. On January 25, 1978 the United Bank of India offered to reinstate the appellant but without back wages and the case was adjourned for some time. But no compromise was reached. On August 23, 1978 the United Bank of India examined its Personnel Officer Shri R. B. Ray and formally closed the evidence. The case was thereafter adjourned to October 3, 1978 for arguments. On that date the United Bank of India submitted an application praying that the Bank should be allowed to cross-examine the appellant whose evidence had been closed on May 21, 1976. By its order dated October 17, 1978 the Tribunal dismissed the application of the United Bank of India on the ground that since no new plea had been taken there was no ground to recall the appellant and subject him to further cross-examination. The arguments were heard by the Tribunal on November 2, 1978 and an award was given on January 30, 1981 holding that the termination of the services of the appellant was not justified and was bad, illegal, and unenforceable. The Tribunal also held that the appellant should be deemed to be in continuous service of the Narang Bank of India Ltd., New Delhi on and after

February 10, 1975 and consequently of the United Bank of India on the date of the award. The Tribunal directed that the appellant should be paid his full back wages up to the date of his reinstatement. It also awarded costs of Rs. 1000 to the appellant. Aggrieved by the said award the United Bank of India filed a writ petition before the High Court of Delhi in Civil Writ Petition No. 928 of 1981. That petition was heard and disposed of by the learned Single Judge of the High Court on February 24, 1987. The learned Single Judge set aside the award made by the Tribunal on the ground that when once a person was impleaded as a party to the proceedings, principles of natural justice required that he should be given an opportunity to cross-examine those witnesses whose evidence had been recorded earlier and since the Tribunal had declined to grant permission to the United Bank of India to cross-examine the appellant whose evidence had been closed on May 21, 1976 the award was liable to be quashed. The learned Single Judge, however, remanded the case to the Industrial Tribunal to decide the case again after giving an opportunity to the United Bank of India to cross-examine the appellant and other witnesses. Aggrieved by the judgment of the learned Single Judge the appellant filed Letters Patent Appeal No. 67 of 1987 before the Division Bench of the High Court. That appeal was dismissed by the Division Bench of the High Court holding that the United Bank of India had the right to cross-examine the appellant on the sole ground that it had been impleaded as a party after the merger of the Narang Bank of India Ltd. with the United Bank of India. Aggrieved by the decision of the Division Bench of the High Court the appellant has filed this appeal by special leave.

4. The question for consideration in this case is whether a party who acquires the rights and liabilities of a party to a proceeding is entitled to reopen as a matter of course the proceedings on being impleaded as a party in the place of the party whose rights and liabilities he had taken over. No express provision corresponding to Rule 10 Order 22 of the Code of Civil Procedure, 1908, which provides that in cases of an assignment, creation or devolution of any interest during the pendency of a suit other than those cases dealt with earlier in Order 22 of the Code of Civil Procedure, 1908, the suit may by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved is applicable to the proceedings before the Industrial Tribunal has been brought to our notice. Section 18 of the Industrial Disputes Act, 1947, however, provides that an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on all parties to the industrial dispute; all other parties summoned to appear in the proceedings as parties to the dispute, unless the Labour Court, Tribunal or National Tribunal as the case may be records the opinion that they were so summoned without proper cause; and where a party referred to above is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates.

5. It is however, necessary to evolve a reasonable procedure to deal with cases where a devolution of interest takes place during the pendency of a proceeding arising under the Industrial Disputes Act, 1947. In the circumstances it is reasonable to hold that in every case of transfer, devolution, merger takeover or a scheme of amalgamation under which the rights and liabilities of one company or corporation stand transferred to or devolve upon another company or corporation either under a private treaty, or a judicial order or under a law the transferee company or corporation as a successor-in-interest becomes subject to all the liabilities of the transferor company or corporation and becomes entitled to all the rights of the transferor company or corporation subject to the terms and conditions of the contract of transfer or merger, the scheme of amalgamation and the legal provisions as the case may be under which such transfer, devolution, merger, takeover or amalgamation as the case may be may have taken place. It follows that subject to such terms it becomes liable to be impleaded or becomes entitled to be impleaded in the place of or in addition to the transferor company or corporation in any action, suit or proceeding filed against the transferor

company or corporation by a third party or filed by the transferor company or corporation against a third party and that whatever steps have already taken place in those proceedings will continue to operate against and be binding on the transferee company or corporation in the same way in which they operate against a person on whom any interest has devolved in any of the ways mentioned in Rule 10 of Order 22 of the Code of Civil Procedure, 1908 subject of course to any terms in the contract of transfer or merger, scheme of amalgamation or other relevant legal provisions governing the transaction under which the transferee company or corporation has become the successor-in-interest of the transferor company or corporation.

6. In the instant case admittedly all the rights and liabilities of the Narang Bank of India Ltd. in its banking business were taken over by the United Bank of India under the agreement of merger dated July 25, 1976. Clause 22 of the agreement of merger provides as follows :

22. The transferee shall be substituted in place of the transferor in respect of all court or tribunal proceedings, cases, suits and government and municipal records and shall apply to the authorities, court, tribunal or otherwise for being added as the parties hereto and the benefits of all orders, directions, decrees and award or judgment if and when issued will pass on to the transferee, who shall be bound or abide by the same subject to the liabilities not taken over by the transferee including those in respect of staff assistants and employees concerned of the transferor as mentioned in Clause 20 hereof. All legal costs for such substitution and/or prosecution or contesting the said action and proceedings existing or binding on the said date shall be borne by the transferee.

7. In view of the terms of the agreement of merger and in particular Clause 22 thereof the United Bank of India was rightly impleaded as a party to the proceedings before the Tribunal in the place of the Narang Bank of India Ltd. By reason of impleading of the United Bank of India as a party there was no change in the character of the proceedings pending before the Tribunal. The United Bank of India only stepped into the shoes of the Narang Bank of India Ltd. and all proceedings that had gone on till the date on which the United Bank of India was so impleaded were binding on the United Bank of India. The proceedings before the Tribunal could thereafter be continued against the United Bank of India. The United Bank of India could thereafter take part in the further proceedings before the Tribunal in the same capacity in which the Narang Bank of India Ltd. was appearing in the case. It was bound by all proceedings which had taken place till then. It could not go back on the proceedings. Generally speaking an assignee cannot set up a case inconsistent with the one put forward by his assignor and it is only in exceptional cases an assignee could be permitted to raise any new plea and that too only for avoiding multiplicity of the proceedings. In the instant case there was no such exceptional circumstance which entitled the United Bank of India to take up a plea different from the pleas which had already been taken up by the Narang Bank of India Ltd. and there was also no need to permit it to reopen the proceedings which had gone on till then. The High Court has not adverted to any such exceptional circumstance. The learned Single Judge has not set out any justifiable reason for observing that the principles of natural justice demanded that all those witnesses whose evidence had been recorded earlier could be recalled at the instance of the United Bank of India and opportunity afforded to the United Bank of India to cross-examine them. The learned Single Judge was in error in observing that the United Bank of India was appearing before the Tribunal in its own right and was entitled to protect its own interest. As already observed by us the proceeding pending before the Tribunal on the date of merger could not be considered as a new proceeding instituted against the United Bank of India on its being impleaded. It was the same old proceeding to which the Narang Bank of India Ltd. was a party and the rights of the United Bank of

India in the conduct of the proceedings could not be larger than the rights which the Narang Bank of India Ltd. itself possessed. If the Narang Bank of India Ltd. had no right to recall the witnesses who had been examined on behalf of the appellant for cross-examination on the date on which the United Bank of India made such prayer before the Tribunal, the United Bank of India also could not be granted permission to do so. In the absence of any exceptional circumstance which would have entitled in the ordinary course a party to a proceeding to recall a witness whose evidence had already been completed for further cross-examination the United Bank of India could not make such a claim at all. The learned Single Judge who set aside the award in the first instance and the Division Bench which merely affirmed the decision of the learned Single Judge have erred in overlooking the true legal position explained above us. On the facts and in the circumstances of the case the United Bank of India was not entitled to recall any of the witnesses examined on behalf of the appellant for further cross-examination particularly after both the parties had closed their respective cases before the Tribunal. The dismissal of the application made by the United Bank of India for recalling the appellant for further cross-examination, in the absence of any exceptional circumstance, could not be considered as a ground for setting aside the award. The principles of natural justice had not, therefore, been violated by the Tribunal in passing the award. We, therefore, set aside the judgment of the Division Bench of the High Court and also of the learned Single Judge. It is, however, mentioned before us that the United Bank of India had some other grounds to urge before the learned Single Judge and the case may be remanded to the learned Single Judge for considering those grounds. We, therefore, remand this case to the learned Single Judge to consider any other relevant ground that may be urged by the United Bank of India and to dispose of the writ petition in accordance with law. This appeal is accordingly allowed. The United Bank of India is directed to pay the costs of the appellant.

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