Harbans Lal and Others

Vs

State of Himachal Pradesh and Others

Writ Petition (Civil) No. 548 of 1987

(K. Jagannatha Shetty, A. M. Ahmadi JJ)

01.08.1989

JUDGMENT

K. JAGANNATHA SHETTY, J. –

1. The petitioners are carpenters 1st and 2nd grade employed at the Wood Working Centre of the Himachal Pradesh State Handicraft Corporation (the "Corporation"). They are termed as daily rated employees. In this petition under Article 32 of the Constitution, they are seeking enforcement of their fundamental right to have "equal pay for equal work". They demand payment in terms paid to their counterparts in regular services. They want the same pay of the regular employees as carpenters or in the alternative, the minimum wages prescribed by the Deputy Commissioner for like categories of workmen. They also seek regularisation of their services with the benefits of pension, gratuity, etc.

2. The Corporation has resisted the petitioners' claim. The case of the Corporation is that the unit where the petitioners are working is a factory registered under the Factories Act. The petitioners are treated as industrial workmen and are given all benefits due to them under the various labour legislations. The government has not fixed the minimum wages payable to the petitioners engaged in the Corporation or other like industries, but the Corporation has adopted the minimum wages payable for similar work in the construction industry. They are being paid the same wages a are payable to carpenters, painters and carpenters' helpers engaged in the construction industry. They are given bonus under the Bonus Act and provident fund benefits under the Employees' Provident Fund Act. It is also stated that the petitioners are supplied with the necessary tools for carrying out their work and also working uniforms like aprons and overalls.

3. The Corporation has clearly stated that there are no regular employees of the petitioners' categories in its establishment and, as such, the question of payment to the petitioners, the pay admissible to regular employee does not arise.

4. A little more information about the purpose and object of the Corporation would be useful for proper understanding of the case. The Corporation is a company which has been incorporated under the Companies Act, 1956. The main object of the Corporation as seen from the Memorandum of Association is to preserve the traditional arts and crafts and also to popularise handicrafts and handloom items in the State of Himachal Pradesh and other parts of the country and abroad. In order to achieve this primary objective, the Corporation gives training to artisans, weavers and craftsmen in various traditional arts and crafts. During the period of training, the trainees are paid a stipend by the Corporation. Up to March 31, 1987, the Corporation has imparted training to as many as 1662 person in different areas like carpet weaving, handloom waving, painting, metal crafts,

wood carving, etc. Apart from giving training, the Corporation also ensures marketing support to the artisans and craftsmen by purchasing their products at remunerative prices and selling them through the marketing network of the Corporation. It is thus a service-oriented organisation helping the village artisans and craftsmen to produce and market their products on remunerative prices. It is said that the village artisans and craftsmen make different items on a piece rate basis and in some cases, they execute the work in their own homes.

5. The financial aspects of the Corporation is stated to be not encouraging, and indeed, it is disappointing. It has suffered huge loss and the total losses accumulated hitherto is Rs. 69.77 lakhs. Nonetheless, for the purpose of preserving and promoting traditional arts and crafts, the Corporation has been kept alive. But to avoid or minimise further loss, it is stated that the Corporation has reduced its overheads and maintained only the administrative staff in the production centres at different parts of the State and no permanent craftsmen are employed.

6. With these facts, we may now turn to the principle upon which the petitioners' case is rested. The principle of "equal pay for equal work" is not one of the fundamental rights expressly guaranteed by our Constitution. The principles was incorporated only under Article 39(d) of the Constitution as a Directive Principle of State Policy. Perhaps, for the first time, this Court in Randhir Singh v. Union of India has innovated that it is a constitutional goal capable of being achieved through constitutional remedies. There the court pointed out that that principle has to be read into Article 14 of the Constitution which enjoins the State not to deny any person equality before the law or the equal protection of the law and also into Article 16 which declares that there should be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Randhir Singh case ((1982) 1 SCC 618 : 1982 SCC (L&S) 119 : AIR 1982 SC 879 : (1982) 60 FJR 201), was concerned with a driver constable in the Delhi Police Force under the Delhi Administration. He claimed equal salary for equal work as that of other drivers. The Court found that the petitioner therein performed the same functions and duties as other drivers in the service of Delhi Administration. The court, therefore, directed the Central Government to fix the pay scale of the petitioner on par with his counterparts doing identical work under the same employer.

7. In the immediate aftermath of the decision in Randhir Singh case ((1982) 1 SCC 618 : 1982 SCC (L&S) 119 : AIR 1982 SC 879 : (1982) 60 FJR 201), there were bumper cases filed in this Court for enforcement of the right to "equal pay for equal work", perhaps little realising the in-built restrictions in that principle. It may not be necessary here to refer to all those decision since almost all of them have been considered and explained in the recent two decisions to which one of us was a party (K. Jagannatha Shetty, J.). Reference may be made to (i) State of U.P. v. J.P. Chaurasia ((1989) 1 SCC 121), and (ii) Meva Ram Kanojia v. All India Institute of Medical Sciences ((1989) 2 SCC 253). In Chaurasia case ((1989) 1 SCC 121), the question arose whether it was permissible to have two different pay scales in the same cadre of Bench Secretaries of the Allahabad High Court who were for all practical purpose performing similar duties and having same responsibilities. The court held that the principle of "equal pay for equal work" has no mechanical application in every case of similar work. Article 14 permits reasonable classification founded on rational basis. It is, therefore, not impermissible to provide two different pay scales in the same cadre on the basis of selection based on merit with due regard to experience and seniority. It was pointed out that in service, merit or experience could be the proper basis for classification to promote efficiency in administration and he or she learns also by experience as much as by other means. Apart from that, the court has expressly observed that the higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues may also be allowed.

8. Meva Ram Kanojia ((1989) 2 SCC 235), is the most recent decision which has exhaustively dealt with all the principles bearing on the question of equal pay for equal work in the light of all the previous decisions of this Court. There the petitioner was a "Hearing Therapist" in the All India Institute of Medical Sciences. He claimed pay scale admissible to "Senior Speech Pathologist", "Senior Physiotherapist", "Senior Occupational Therapist", "Audiologist", and "Speech Pathologist". His case was based on the allegations that he was discharging same duties and performing similar functions as "Senior Speech Therapist", "Senior Physiotherapist", "Senior Occupational Therapist", "Audiologist" and "Speech Pathologist". But the court held that the principle of equal pay for equal work cannot be invoked invariably in every kind of service particularly in the area of professional services. It was also held that it is open to the State to classify employees on the basis of qualification, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scales.

9. Reference may also be made to the decision in Federation of All India Customs and Central Excise Stenographers (Recognised) v. Union of India ((1988) 3 SCC 91). There the Personal Assistants and Stenographers attached to the Heads of Department in Customs and Central Excise Department of the Ministry of Finance made a claim for parity of wages with the Personal Assistants and Stenographers attached to Joint Secretaries and officers above them in Ministry of Finance. The court while rejecting the claim expressed the view : (SCC p. 100, para 7)

> "But equal pay must depend upon the nature of the work done it cannot be judged by the mere volume of work, there may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. One cannot deny that often the difference is a matter of degree and that there is an element of value judgment by those who are charged with the administration in fixing the scales of pay and other conditions of service. So long as such value judgments is made bona fide, reasonably on an intelligible criterion which has a rational nexus with the object of differentiation, such differentiation will not amount to discrimination. It is important to emphasize that equal pay for equal work is a concomitant of Article 14 of the Constitution. But it follows naturally that equal pay for unequal work will be a negation of that right."

10. Thus the law relating to equal pay for equal work has been practically hammered out and very little remains for further innovation.

11. In the light of the aforesaid principles, we may now consider whether the equality claims of the petitioners could be allowed. We have carefully perused the material on record and given our anxious consideration to the question urged. From the averments in the pleadings of the parties it will be clear that the Corporation has not regularly employed carpenters. Evidently the petitioners are claiming wages payable to the carpenters in government service. We do not think that we could accept their claim. In the first place, even assuming that the petitioners' jobs are comparable with the counterparts in the government service, the petitioners cannot enforce the right to "equal pay for equal work". The discrimination complained of must be within the same establishment owned by the same management. A comparison cannot be made with counterparts in other establishments with different management, or even in establishments in different geographical locations though owned by the same master. Unless it is shown that there is a discrimination amongst the same set of employees by the same master in the same establishment, the principle of "equal pay for equal work" cannot be enforced. This was also the view expressed in Meva Ram Kanojia v. A.I.I.M.S.

((1989) 2 SCC 235), (SCC p. 245). In the instant case, the petitioners are employed by a company incorporated under the Companies Act. They cannot claim wage payable to their counterparts in government service.

12. Secondly, it may be noted that the petitioners are carpenters; better called as craftsmen. By the general description of their job, one cannot come to the conclusion that every carpenter or craftsman is equal to the other in the performance of his work. The two jobs by the mere nomenclature or by the volume of work performed cannot be rated as equal. It is not just a comparison of physical activity. It requires the consideration of various dimensions of the job. The accuracy required by the job and the dexterity it entails may differ from job to job. It cannot be evaluated by the mere averments in the self-serving affidavits or counter-affidavits of the parties. It must be left to be evaluated and determined by expert body. The principal claim of the petitioners therefore fails and is rejected.

13. The next contention that the petitioners should be paid at least the minimum wages prescribed by the Deputy Commissioner under Ex. P. 2 dated March 20, 1986 cannot also be accepted Ex. P. 2 was issued by the Deputy Commissioner in the exercise of his powers under the H.P. Financial Rules. It is applicable only to skilled and unskilled workers in class IV employees in government service. It has not been extended to employees of the Corporation. The petitioners have been treated as construction workers and they are being paid the minimum wages admissible to such workmen. The Court, therefore, cannot direct the Corporation to apply the rates prescribed under Ex. P. 2 unless the government makes it applicable to employees of the Corporation.

14. As to the claim for regularisation of services of the petitioners, we express no opinion, since the factual data is disputed and is insufficient. We leave the petitioners to work out their rights elsewhere in accordance with law applicable to them.

15. In the result, the petition fails and is dismissed. In the circumstances of the case, we make no order as to costs.

Bindeshwari Ram

Vs.

State Of Bihar And Others

Civil Appeal No. 3982 of 1989

(Ojha, J.)

19.10.1989.

JUDGMENT

OJHA, J. –

1. Special leave granted.

2. This appeal has been preferred against the judgment dated April 20, 1988 of the Patna High Court dismissing a writ petition filed by the appellant challenging a seniority list. Necessary facts in brief are these :

The appellant and respondents 7 to 13 are Assistant Conservators of Forest in Bihar Forest Service. Their service conditions are governed by the Bihar Forest Service Rules, 1953 (hereinafter referred to as 'the Rules') made by the Government of Bihar in exercise of the powers conferred on it by the proviso to Article 309 of the Constitution of India. According to Rule 2(vii) of the Rules "the service" means the Bihar Forest Service. Rule 3 provides that the appointments of the service shall ordinarily be made by (a) direct recruitment in accordance with the rules in Part II of these Rules by competitive examination to be held by the Commission; and (b) by promotion in accordance with the rules contained in Part V of selected rangers specified therein. The appellant and respondents 7 to 12 were selected rangers and were appointed as Assistant Conservator of Forest by promotion under Rule 3(b). As is apparent from the counter-affidavit on behalf of respondents 8 to 10, respondent 11 was promoted as Assistant Conservator of Forest on December 21, 1976, respondents 7,8,9 and 12 on November 29, 1977 and respondent 10 on December 15, 1978. Insofar as the appellant is concerned, even though, he was appointed subsequently, his appointment was made effective retrospectively from November 29, 1977. Respondent 13, on the other hand, as is apparent from the seniority list which was challenged by the appellant, was appointed under Rule 3(a) of the Rules by direct recruitment on May 3, 1978. The counter-affidavit further indicates that respondent 13 was confirmed as Assistant Conservator of Forest on June 30, 1983. Respondents 7 to 11 were confirmed on August 30, 1983. and respondent 12 was confirmed on August 5, 1986 whereas the appellant was confirmed on December 31, 1986. In the said counter-affidavit the dates of appointment as rangers of respondents 11,7,8,9,10,12 and the appellant respectively are stated as April 3, 1958, April 4, 1958, April 9, 1958, April 7, 1959, April 1, 1966 and April 2, 1967. Even though a rejoinder has been filed by the appellant, the correctness of the aforesaid facts has not been denied therein nor has it been urges by the learned counsel for the appellant before us that these facts are inaccurate. It is the basis of these facts, therefore, that the respective submissions made by learned counsel for the parties have to be considered.

3. It has been urged by learned counsel for the appellant mainly relying on a memorandum to the Cabinet dated November 24, 1977 which contains a note that if the appellant was found fit for promotion by the selection committee, his place will be above 10 general category rank officers mentioned therein, that in the seniority list the name of the appellant should have been placed above those officers. According to the learned counsel for the appellant the memorandum was approved by the Cabinet on the same date and yet in the impugned seniority list the aforesaid direction was not carried out. For the respondents, it was urged that the Cabinet had not approved the memorandum in its entirety. In our opinion, however, it is not necessary to go into this controversy. It was on the above premise that the writ petition challenging the seniority list was filed by the appellant in the High Court and according to his learned counsel, the High Court committed an error in dismissing the same.

4. Having heard learned counsel for the parties, we find it difficult to agree with the submission

made by the learned counsel for the appellant. As seen above, the service conditions of Assistant Conservators of Forest who are members of the Bihar Forest Service, are governed by the Rules. Rule 35 which specifically deals with the matter of seniority reads as hereunder :

"35. Seniority of officers appointed to the service shall be determined with reference to the date of their substantive appointment to the service :

Provided that -

(i) in the case of members of the service appointed by direct recruitment at the same time, their seniority inter se shall be in the order of merit in which their names are placed in the list of successful candidates at the final examination of the India Forest College, Dehra Dun;

(ii) in case where appointments are made to the Service both by direct recruitment and promotion of selected rangers at the same time, the promoted members of the service shall be senior to the members directly recruited; and

(iii) the seniority inter so of rangers on substantive appointment to the service by promotion at the same time shall be their seniority inter se held as rangers."

5. In the instant case we are not concerned with clause (i) of the proviso. Even clause (ii) is not attracted inasmuch as respondent 13 even though was appointed by direct recruitment, was not appointed " at the same time" as the appellant and respondents 7 to 12 as already indicated above. It is clause (iii) of the proviso, therefore, which is relevant for the determination of the seniority inter se of the appellant and respondents 7 to 12. On a plain reading of this clause it is apparent that on substantive appointment of rangers to the service by promotion, their seniority inter se in the service is to be governed by " their seniority inter se held as rangers. " As seen above, the appellant as well as respondents 7 to 12 have already been confirmed as Assistant Conservator of Forest and meet the requirement of" substantive appointment to the service by promotion". In order to determine their inter se seniority as Assistant Conservator of Forest, therefore, their seniority inter se held as rangers shall be the determining factor. The respective dates of appointment as rangers of the appellant and respondents 7 to 12 have already been given above. Its perusal indicates that respondents 7 to 12 had been appointed as rangers much before April 2, 1967 which was the date on which the appellant was appointed as a ranger. The dates of appointment and confirmation of respondent 13 who is a direct recruit, have been noted earlier. In this view of the matter the claim of seniority as made by the appellant has on substance.

6. It is settled law that the provisions of statutory rules cannot be modified or altered by executive instructions and it is only in the absence of statutory rules that executive instructions have relevance. As such even if for the sake of argument it may be accepted that on account of the memorandum to the Cabinet or any other executive instruction the appellant was to be given seniority as claimed by him it could not be done as in case of a conflict the statutory provisions contained in this behalf in proviso (iii) of Rule 35 of the Rules shall prevail. In the result this appeal fails and is dismissed but in the circumstances of the case there shall be no order as to costs.

Smt. Sushma Gosain And Others

Vs.

Union Of India And Others

Civil Appeal No. 3642 of 1989

(Jagannatha Shetty, J.)

25.09.1989.

JUDGMENT

JAGANNATHA SHETTY, J. –

1. Special leave granted.

2. We must first express our disapproval of the way in which the department of Director General Border Road ("DGBR") has behaved in this pitiable case.

3. Ram Kumar was working as Storekeeper in the Department of Director General Border Road ("DGBR"). In October 1982, he died in harness leaving behind the appellants. Appellant 1 - Sushma Gosain is his widow and appellants 2 and 3 are his minor children.

4. In November 1982, Sushma Gosain sought appointment in DGBR as Lower Division Clerk on compassionate grounds. In January 1983 she was called for the written test and later on for interview. She was said to have passed the trade test. But nonetheless she was not appointed. Whenever she approached DGBR, she was told that her case was under consideration.

5. In September 1985, Sushma Gosain filed writ petition in the High Court of Delhi for a direction against DGBR to appoint her in a suitable post. She was entitled to appointment in terms of Government Memorandum O.M. No. 14034/1/77/Estt. (d) dated November 25, 1978 issued by the Ministry of Home Affairs. DGBR however, resisted the writ petition with the primary contention that the appointment of ladies in the establishment was prohibited. In support of the contention. DGBR relied upon a notification dated January 25, 1985 issued by the Central Government under sub-sections (1) and (4) of Section 4 of the Army Act, 1950. The DGBR however, mercifully stated that it approached other departments to get an employment to Sushma Gosain in order to mitigate her hardship but everyone regretted. Interestingly, it was also stated that if Sushma Gosain nominates a male member of her family he could be considered for appointment. This was not without the knowledge that she has only a minor son.

6. The High Court dismissed the writ petition by the brief order which reads as under :

"An affidavit has been filed on behalf of the respondents setting out all the relevant facts and the attempts made by them to provide employment to the petitioner. It is apparent from the said affidavit that it has not been possible to do anything for the petitioner.

Counsel for the petitioner has told us that her client is not able to provide the name of a male relation to whom employment could be offered. In these circumstances, even this alternative is not possible.

Since we cannot give any relief to the petitioner, this petition is dismissed.

Sd/- T.P.S. Chawla Chief Justice

Sd/- Y.K. Sabharwal Judge"##

7. The appellants appeal to this Court.

8. We heard counsel on both sides and gave our anxious consideration to the problem presented. It seems to us that the High Court has made the order in mechanical way and if we may say so, the order lacks the sense of justice. Sushma Gosain made an application for appointment as Lower Division Clerk as far back in November 1982. She had then a right to have her case considered for appointment on compassionate ground under the aforesaid government memorandum. In 1983, she passed the trade test and the interview conducted by the DGBR. There is absolutely no reason to make her to wait till 1985 when the ban on appointment of ladies was imposed. The denial of appointment is patently arbitrary and cannot be supported in any view of the matter.

9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

10. In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent 2 to appoint Sushma Gosain appellant 1 in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today.

11. The appellants are entitled to their costs which we quantify at Rs. 15,000 and it shall be paid within three weeks.

Bank Of Baroda

Vs.

Rednam Nagachaya Devi

Civil Appeal No. 3090 of 1988

(Venkatachaliah, J.)

31.09.1989.

JUDGMENT

VENKATACHALIAH, J. –

1. This appeal, by special leave, is by the plaintiff - Bank of Baroda - a nationalised bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act (Act 5 of 1970) and is directed against the judgment and decree dated June 29, 1988 of the High Court of Andhra Pradesh in Second Appeal No. 832 of 1987 affirming the concurrent decrees of dismissal of plaintiff's suit recorded by the trial and the first appellate courts. The two courts below dismissed the suit principally on the ground - upholding the respondent's defence in that behalf - that Section 13 of the Andhra Pradesh (Andhra Area) Agriculturists Relief Act (4 of 1938) (A.R. Act, 1937, for short) prohibited the charging of compound interest. Appellant's case that Section 4(e) of the said 'Act' itself excluded its application to banks constituted under a statute was not accepted.

2. On October 16, 1982, appellant instituted Original Suit No. 47 of 1983 on the file of Subordinate Judges, Eluru, for the recovery of a sum of Rs. 18,076.45 alleged to be due towards principal and the balance of accrued interest under an agricultural loan obtained by the respondent on January 16, 1971 on the security of certain properties respecting which a charge was created in favour of the appellant under a mortgage by deposit of title deeds. Appellant claimed to be entitled to interest, as agreed to between the parties, at 41/2 per cent above the Reserve Bank rate, with quarterly rests. Appellant alleged that respondent who had periodically acknowledged the liability for repayment of the balance outstanding having failed and neglected to repay, appellant had had to call up the account and institute the suit.

3. Respondent inter alia, contended that she had, indeed, paid far in excess of what the appellant was legitimately entitled to recover under the law; that as against the sum of 15,000 originally borrowed she had paid two sums of Rs. 20,000 each on September 8, 1980 and December 15, 1981 respectively; that she was entitled to the benefit and protection of the "A.R. Act" and that, accordingly, she was herself entitled to a refund of Rs. 14,756.90 paise for the recovery of which she preferred a counter-claim. The trial court by its judgment dated November 4, 1985 accepted the defence of the respondent and while entering a decree of dismissal of the plaintiffs suit, it, however, proceeded to decree the counter-claim of the respondent in the sum of Rs. 14,756.90 paise. In doing so the trial court almost entirely placed reliance upon and followed an earlier decision of the same High court in Indian Bank, Alamuru v. Muddana Krishna Murthy ((AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90). The trial court felt bound by the view taken therein as to the scope of Section 4(e) of the A.R. Act which denied to banks constituted under the banking Companies (Acquisition and Transfer of Undertakings) Act (5 of 1970), the exemption from the provisions of the 'A.R. Act'.

4. Against this judgment and decree of the trial court appellant preferred two appeals, one against the dismissal of its suit and the other against the decree of the counter-claim, in A.S. Nos. 153 and 154 of 1985 on the file of the District Judge, West Godavari. The appellate court found no merit in the appeals and dismissed them by its judgment dated April 13, 1987.

5. The Second Appeal No. 832 of 1987 preferred by the appellant before the High Court of Andhra Pradesh also came to be dismissed by a learned Single Judge who heard the matter by the judgment dated June 29, 1988 now under appeal. The defence urged by the respondent, and upheld by the courts below, was that the respondent was entitled to the benefit of the "A.R. Act" and of the laws against usury. Indeed, the controversy between the parties was appropriately summed up by the High Court :

"The defendants admitted the borrowings of the principal sum and execution of the prissory (sic promissory) note and the agreement and the hypothecation of the crops, above referred to. The fact that the agreement stipulated for payment of interest at the above rates with quarterly rest was never in dispute. Their only defence was based on the provisions of A.P. Agriculturists Relief Act, 1938 (Act 4 of 1938) hereinafter called 'the Rajali Act' and also the Usurious Loans Act (Act 10 of 1918) as amended by the Tamil Nadu Act 8 of 1937 and the protection which those Acts afford to them. According to the defendants, those two Acts had forbidden the Plaintiff-bank from charging of compound interest from the agriculturists".

6. In the second appeal, however, a new dimension to the controversy was imparted by the circumstances that the decision in Indian Bank case (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90), on which both the trial court and the first appellate court had relied was itself overruled by this Court in Bank of India v. Vijay Transport ((1988) Supp SCC 47 : AIR 1988 SC 151), in which it was held that a nationalised bank within the purview of the Banking Companies (Acquisition and Transfer of Undertakings) Act (5 of 1970) ('Banking Companies Act' for short) fell within the ambit of and attracted the exemption contained in Section 4(e) of the A.R. Act and that, therefore, loans advanced by such banks did not attract the provisions of the "A.R. Act". It is relevant to recall that Section 4(e) of the A.R.Act exempted from the scope of its provisions debts and liabilities owed by the agriculturists to "any corporation formed in pursuance of an Act of Parliament of United Kingdom or of any special Indian Law of Royal Charter or Letters Patent". In the Indian Bank case (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983)) 2 Andh WR 90), the Andhra Pradesh High Court was persuaded to the view that the words "special Indian Law " occurring in Section 4(e) of the A.R. Act had no application to law made by any of the legislatures in India; but had reference only to a law made by the British Parliament and that banks constituted under the said "Banking Companies Act " were not entitled to the exemption under Section 4(e). This view was not approved by this Court in Bank of India case ((1988) Supp SCC 47 : AIR 1988 SC 151). This Court held : (SCC pp. 52-53, para 12)

"Although, theoretically, there may be a distinction between the words 'in pursuance of' and the words 'by or under', but by using the expression 'in pursuance of' in Section 4(e) the legislature, in our opinion, has not meant that the corporation in question should be formed by a third party in pursuance of the law and not by the law itself in order to come within the purview of Section 4(e) of the Act,... It will be highly unreasonably and illogical to think that as a corporation has been formed by or under a special Indian law and not in pursuance of such a law, it will not come with in the purview of Section 4(e) of the Act the legislature, in our opinion, has not meant that the corporation in question should be formed by a third party in pursuance of the law itself in order to come within the purview of Section 4(e) of the Act. ... It will be highly unreasonable and illogical to think that as a corporation has been formed by or under a special Indian law and not in pursuance of such a law, it will not come within the purview of Section 4(e) of the Act. Accordingly, we hold that the Banking Companies, Act is a special Indian law and the provision of Section 4(e) is applicable to the appellant bank."

7. In view of the pronouncement of this Court disapproving the decision of the High Court taken in Indian Bank case (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90), the substratum of the reasoning in the judgment of the courts below had disappeared. But the High Court proceeded to examine the constitutional validity of the said Section 4(e) itself and recorded a finding that the provision violated the constitutional pledge of equality under Article 14. It might, perhaps, also be relevant to mention here that respondent does not appear to have raised any contention as to the constitutional validity of the said Section 4(e) either in the courts below or before the High court. The learned Judge appears to have embarked upon this enquiry to as to the constitutionality of the provision in view of what he considered to be the general importance of the question and its impact on the rural economy in general.

8. The reasoning of and the conclusions and findings recorded by the High Court is somewhat on these lines :

(a) Though banks constituted under the Banking Companies (Acquisition and Transfer of undertakings) Act, 1970, were held by the Supreme Court in Bank of India case ((1988) Supp SCC 47 : AIR 1988 SC 151), to be entitled to the exemption under Section 4(e), however, as the Supreme Court had not considered the constitutional validity of Section 4(e) that question was vet open to the High Court to examine and pronounce upon.

The classification of debtors implicit in the scheme of Section 4(e) is not based on any differentium special to them but on the identity of the creditor. In the ultimate analysis, the differentium has no rational nexus with the object sought to be achieved by the A.R. Act. viz. relief to agriculturists from excessive interest. Accordingly Section 4(e) of the A.R. Act, to the extent it exempts loans advanced by banks to agriculturists from the operation of the said Act,brings about an impermissible classification of debtors based on the irrelevant consideration as to who their respective creditors are. This classification is violative of Article 14. This principle is recognised in State of Rajasthan v. Mukan Chand. (AIR 1964 SC 1633).

If Section 4(e) is thus out of the way, there is no impediment to the attraction of the benefit of Section 13 of the A.R. Act to the debtors in the position of the respondent.

(b) That Section 21-A of the Banking Regulation Act, 1949, introduced by the Banking Laws (Amendment) Act, 1983 (1 of 1984), with effect from February 5, 1984, did not override the provisions of the A.R. Act.

(c) That the appellant bank, even as any other creditor, is forbidden under Section 13 of the A.R. Act from charging compound interest on agricultural loans and that court is bound to deny the bank its help in the recovery of the compound interest from agriculturists.

(d) That, at all events, Section 21-A of the Banking Regulation Act, 1949 (as amended by Banking Regulation (Amendment) Act 1 of 1984) is prospective in operation and that in relation to debts incurred prior to February 5, 1984 the provisions of the Usurious Loans Act, 1918, continue to be applicable to loans advanced by banks.

9. If Section 4(e), upon its true construction, is held to include the appellant bank and is not held to be unconstitutional, the second point (b) does not survive, Point (c) is merely the expression of the effects and consequence of point (a). The main question turns on point(a) and on whether the High Court have itself embarked upon the enquiry as to constitutionality of Section 4(e).

10. The correctness of the reasoning and findings of the High Court are seriously assailed by the appellant. Sri. Bobde, learned senior advocate for the appellant submitted that the High Court fell into a serious error in embarking upon an enquiry - without any plea being raised and urged in that behalf by the respondent - as to the constitutionality of Section 4(e) of the A.R. Act. The question of constitutionality of a statutory provision enacted by a competent legislature after due formality cannot, contends counsel, be decided on hypothetical, academic or theoretical considerations in the absence of specific grounds raised by a party seeking to dislodge the presumption of its constitutionality and that the learned Judge of the High court was not justified in examining this question virtually in a state of vacuum of pleadings and of specific grounds which alone would have enabled the appellant specifically to traverse them. Accordingly to the learned counsel the conclusion reached by the learned Judge, in part at least, were based on factual assumption which appellant had no opportunity to contest. However laudable the anxiety and concern of the learned Judge on the vexed problem of the indebtedness of the Indian agriculturist might otherwise be, the present case, says counsel, was, in view of the conspicuous absence of any pleadings, singularly inappropriate for the examination of that question.

11. It was further contended by Sri. Bobde that the following observation of the learned Judge :

"The scope of Act 1 of 1984 (The Banking Laws (Amendment) Act, 1983), would, however, have to be examined in the event that exemption granted by Section 4(e) of the Rajaji Act is for any other reason held by this Court not available to the plaintiff bank. As the Supreme Court neither considered the constitutional validity of Section 4(e) of the Rajaji Act nor the scope of Act 1 of 1984, consideration of those two question is still open to this court."

is factually and demonstrably inaccurate in view of the circumstance that at paras 16 and 17 of the judgment of this court in Bank of India case ((1988) Supp SCC 47 : AIR 1998 SC 151), this Court had specifically considered the contention as to the vice of discrimination and the consequent invalidity of Section 4(e) under Article 14 and negatived the same. Sri. Bobde invited our attention to the following passages in the judgment of this Court in Bank of India case ((1988) Supp SCC 47 : AIR 1988 SC 151), (SCC pp. 54-55, paras 16 and 17)

"At this stage, it may be stated that in Krishna Murthy case (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90), it has been held by the Division Bench that the latter part of Section 4(e) of the Act containing the words 'any debt due to any corporation formed in pursuance of an Act of Parliament of the United Kingdom or any special Indian Law or Royal Charter or Letters Patent if offensive to Article 14 of the Constitution and, accordingly, void. The learned counsel for the respondents submits that in view of the decision in Krishna Murthy case. (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90), this court should declare the latter part of section 4(e) of the Act to be void as offending Article 14 of the Constitution, although no such point has ever been taken by the respondents up to this Court. On the other hand, it is submitted by the learned Additional Solicitor General that the said finding of the Division Bench in Krishna Murthy case (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90), to the effect that the latter part of Section 4(e) of the Act is void is erroneous.

The reason given by the Division Bench of the Andhra Pradesh High court in Krishna Murthy case (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90), for holding the latter part of Section 4(e) of the Act as void are that Section 4(e) of the Act was enacted to protect the British economic interests and although such a law could permissibly be enacted under the constitutional scheme of the 1935 Government of India Act, that law after the inauguration of our Sovereign

Democratic Republic cannot but be held to have become void as making invidious discrimination in favour of the British Corporation offending against the equality clause under Article 14 of the Constitution. Before declaring the same as void, the Division Bench took the view that the words 'any special Indian law ' could d not have been intended to refer to any law made by any legislature of our country, but to a law made by the British Imperial Parliament as a piece of special legislation applicable to India. It has already been discussed by us that the words 'any special Indian law' refers and relates to a law made by the Indian legislature and not by the British Parliament. In that view of the matter, the reasons given by the Division Bench for holding the latter part of Section 4(e) to be void as making a discrimination in favour of corporations created by British Parliament, will not apply to corporations formed or created by any special Indian law which, in the instant case, is the Banking Companies Act."

Referring to the A.R. Act, it was held : (SCC p. 55, paras 18 and 19)

"(W)e hold that the provisions of the Act are not applicable to the appellant bank and, therefore, there is no question of sealing down the debt to the bank by the respondents.

For the reasons aforesaid, the judgment and decree of the High Court insofar as the same direct the scaling down of the debts due to the bank by the respondents, are set aside. The bank will be entitled to realise the amount decreed in its favour by the High Court without any scaling down of the same under the provisions of the Act."

12. Sri. Bobde submitted that it was not open to the High court to examine the constitutionality of Section 4(e) even if it be that a particular ground or argument, however weighty, had not been considered in the decision of this Court. Learned counsel referred to the following observations in Smt. Somavanti v. State of Punjab ((1963) 2 SCR 774, 794 : AIR 1963 SC 151 : (1963) 33 Com Cas 745) :

"The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided. That point has been specifically decided in the three decisions referred to above."

The decisions in T. Govindaraja Mudaliar v. State of Tamil Nadu ((1973) 1 SCC 336), Anil Kumar Neotia v. Union of India ((1988) 2 SCC 587), and Kesho Ram & Co. v. Union of India ((1989) 3 SCC 151), on the point were also referred to.

13. In our opinion, the submissions of Sri Bobde on the point are not without force. This court had rejected the attack on Section 4(e) on the grounds of violation of Article 14. That apart, the burden of showing that a classification is arbitrary is basically on the person who impeaches the law. If any state of facts can reasonably be conceived as sustaining the constitutionality, the existence of that state of facts as at the time of the enactment of the law, must also be assumed. The allegations on which violation of Article 14 are based must be specific, clear and unambiguous and must contain sufficient particulars. In Harman Singh v. Regional Transport Authority (1954 SCR 371, 376-77 : AIR 1954 SC 190), Calcutta Mahajan, J. observed :

"In our judgment, this question can be answered only in the negative. It has been repeatedly pointed out by this Court that in construing Article 14 the courts should not adopt a doctrinaire approach which might well choke all beneficial legislation and that legislation which is based on a rational

classification is permissible. A law applying to a class is constitutional if there is sufficient basis or reason for it. In other words, a statutory discrimination cannot be set aside as the denial or equal protection of the laws if any state of facts may reasonably be conceived to justify it."

14. In Sir. Venkata Seetaramanjaneya Rice & Oil Mills v. State of Andhra Pradesh ((1964) 7 SCR 456, 469-70 : AIR 1964 SC 1781), it is said :

"This Court has repeatedly pointed out that when a citizen wants to challenge the validity of any statute on the ground that it contravenes Article 14, specific, clear and unambiguous allegations must be made in that behalf and it must be shown that the impugned statute is based on discrimination and that such discrimination is not referable to any classification which is rational and which has nexus with the object intended to be achieved by the said statute. Judged from that point of view, there is absolutely no material on the record of any of the appeals forming the present group on which a plea under Article 14 can even be raised.

15. Apparently, the learned Judge of the High Court felt greatly disturbed at what he conceived would be the serious adverse consequences if the agricultural loans advanced by banks were exempted from the A.R. Act. After neatly formulating the question which, according to him, should be examined as a constitutional question, the learned Judge made these somewhat impassioned and emotive, pace-setting prefatory observations :

"The first issue in this second appeal is of considerable moment both for the agriculturists as a class and the State, but more for the agriculturists than for the State. Let it be noted that can the agriculturist be legally charged compound interest by the banks is not a metaphysical and speculative enquiry. It is a question of life and death for the agriculturist. The recent spate of suicides committed by the young agriculturists of Guntur and Prakasam districts sometimes in tragic compact with their young wives and children being unable to pay the banks the quarterly compounded interest only highlight the tragic dimensions of this question. For ages the Indian agriculturist has been the victim of vigorous monsoons and predatory debt laws...."

Quoting Mahatma Gandhi the learned Judge said :

"No sophistry, no jugglery in figures can explain away the evidence that the skeletons in many villages present to the naked eye. I have no doubt whatsoever that both England and the town dwellers of India will have to answer, if there is a God above, for this crime against humanity which is perhaps unequalled in history."

Adverting to the considerations, according to the High Court, that impel the conclusions reached on the point it was held :

"Today, agriculture is financed largely by the banks. It is estimated that more than 80 per cent of the agricultural loans in this State are advanced by the banks. Thus bank loans play a major role in agricultural financing. If the bank loans are today exempted from the purview of the Rajaji Act and the banks are permitted to charge compound interest the beneficial provisions of the Rajaji Act would Act would be utterly defeated..."

16. The learned Judge proceeded to say :

"It cannot be denied that the agriculturists suffer equally from the burden of indebtedness whether that burden is thrown upon them by lending bank or by an ordinary moneylender. The burden of

indebtedness cannot change from a change in the status of moneylender. Prima facie therefore, one can find no justification in such classification which is clearly irrational.... (C) an the Act single out the agricultural debtors of the banks as different from other agricultural debtors for the purpose of according differential treatment ?"

17. It is true that in the bank of India case ((1988) Supp SCC 47 : AIR 1988 SC 151), this Court did not examine these aspects as to the unconstitutionality of Section 4(e). Only the insufficiency and, indeed, the irrelevance of the test applied for holding that Section 4(e) as discriminatory, were pointed out. While we are sensible of the anxious concern of the learned Judge for the acuteness and magnitude of the problem of agricultural indebtedness it appears to us that even if the question had not been trammelled by a decision of this Court, it would be appropriate to examine the question in a properly constituted action where pleas challenging the vires of the provision had been properly raised and urged.

18. It is not disputed before us that respondent in this case did not bestir herself to raise this contention. The learned Judge, in view of what he considered to be the general importance of the matter, pondered over the question himself and claim to record a finding that Section 4(e) suffered from the vice of hostile discrimination. It is, perhaps, relevant to recall the observations of Fazal Ali, J. in Rajput Ruda Meha v. State of Gujarat ((1980) 1 SCC 677 : 1980 SCC (Cri) 317. AIR 1980 SC 1707, 1708) : (SCC p. 679, para 6)

"Neither in the application for adducing additional grounds or in the order of the court directing the matter to be placed before the constitution Bench, there was any reference to the validity of Section 384 of the CrPC. Neither was it pleaded during the arguments that Section 384 of the CrPC is ultra vires of the Constitution. As the question of validity of Section 384 of the CrPC was neither raised no argued, a discussion by the court after 'pondering over the issue in depth' would not be a precedent binding on the courts."

19. On a consideration of the matter we think we ought to hold that it was not appropriate for the High Court to have itself taken up this question in the present case. We accordingly set aside the finding of the High court on the unconstitutionality of Section 4(e) of the A.R. Act. Consequently we hold that on defence under the A.R. Act could be urged against the appellant's claim in these proceedings. We are unable to accept the submission Sir Subba Rao for the respondent that the High Court would have failed in its duty if it did not, by itself, and even in the absence of any prayer by the parties, pronounce on the question where the provision bore the clear marks of unconstitutionality on its forehead.

20. So far as point (d) is concerned, the High Court came to find that Section 21-A of the Banking Regulation Act, 1949, did not interdict the provisions of the Usurious Loans Act, 1918. Indeed, the trial and the first appellate courts proceeded almost entirely on the basis that respondent debtor was entitled to relief under the of the "A. R. Act". The said two courts merely followed the earlier decision of the High Court in Indian Bank case. (AIR 1983 AP 347 : (1983) 1 Andh LT 357 : (1983) 2 Andh WR 90). They did not examine either the applicability of or the permissibility of any relief under, the Usurious Loans Act, 1918. In the second appeal before the High court the question was still the same and while the two courts below denied the exemption claimed by the appellant on a point of construction of Section 4(e) the High Court, however, denied the exemption holding Section 4(e) to be unconstitutional. Whether the exemption of the banks from A.R. Act was denied on a point of construction or on one of constitutionality, the result was same. The applicability of and the defences open to the creditor under the Usurious Loans Act were not examined. This aspect

assumed importance only after the respondent's claim for relief under A.R. Act, for whatever reason, is negatived. This question arises now and this Courts will be considering it virtually for the first time in their proceedings.

21. That the High Court did not directly examine the question of the applicability of and the defences that may be raised by the creditor under Usurious Loans Act is clear from its following observations :

"But the substantive claims of agriculturists are based on the Rajaji Act under which charging of compound interest has been made into a forbidden act for the banks. Under the Rajaji Act no compound interest could ever legally accrue in favour of any bank that has advanced loans to the agriculturists. In view of this legal prohibitation the question of courts allowing the compound interest under Act 1 of 1984 or not allowing the compound interest under the Usurious Loans Act cannot arise..."

The learned Judge referred to certain other decisions of the Division Bench of the High Court which according to him had held against the applicability of the Usurious Loans Act, 1918, to any debt due to a banking company and observed.

"The Division Bench in Venkateswarlu case (Koransetty C. Venkateswarlu v. Syndicate Bank, AIR 1986 AP 290), of which Kodandaramayya, J., was also a party held that the rate of interest charged by the banking companies to an agriculturist cannot be reopened because of Section 21-A of the Banking Regulation Act. The Division Bench held that the Usurious Loans Act is no longer applicable to any debt due to a banking company..."

22. In Venkateswarlu case (Koransetty C. Venkateswarlu v. Syndicate Bank, AIR 1986 AP 290), referred to by the learned Judge a Division Bench of the High Court had held :" (AIR p. 291, para 5)

"It is clear that the said provision makes the provisions of Usurious Loans Act inapplicable to any transaction between a banking company and its debtor. The courts' power to reopen the transaction under the provisions of the Usurious Loans Act on the ground that the rate of interest charged is excessive is no longer available. It is not disputed that it affects the pending proceedings also that the Act came into force on February 15, 1984. Thus it is clear that the Usurious Loans Act is no longer applicable to any debt due to a banking company."

The learned Judge also referred to another decision of another co-ordinate bench which appears to have understood Venkateswarlu case (Koransetty C. Venkateswarlu v. Syndicate Bank, AIR 1986 AP 290), in a particular manner in regard to effect of Section 21-A on pending proceedings.

23. The learned Judge of the High Court also referred to certain decisions of other High courts which referred to certain grounds of relief to agricultural debtors in the position of the respondent. The learned Judge said :

"... Jagannatha Shetty J. (as he then was) in the above two Karnataka cases held that Act 1 of 1984 forbids the courts from reopening the transaction only on the ground of excess of interest. He held that provision has no application to the reopening of the loan transaction on other grounds..."

24. We must observe that the question of the applicability of Usurious Loans Act, 1918, to debts advanced by banks and the effect of Section 21-A of the Banking Regulations Act, 1949, have not, received proper consideration in the second appeal. Even if the Usurious Loans Act, 1918, is held

attracted to the transaction, notwithstanding the said Section 21-A, and a presumption under the proviso to clause (b) of sub-section (2) of Section 3 of the Act is drawn, the appellant bank must have an opportunity to rebut such a presumption. Attention to these aspects of the matter have not been focussed as these aspects stood relegated to the background in view of the fact that relief was granted to the respondent principally on the basis of the A.R. Act.

25. We think it is necessary in the circumstances that the judgment of the High court is set aside without any pronouncement on the merits of this controversy and the second appeal remitted to the High Court for consideration of contention pertaining to the effect of Section 21-A of the Banking Regulations Act on the applicability of Usurious Loans Act, 1918, and if the said Act is held attracted whether the appellant is able to rebut the presumption of excessiveness of interest and also whether there were other legal impediments of the nature adverted to by the High Court, a reference to which is made in para 23 (supra), to charge compound interest on agricultural advances. On this point the respondent shall be entitled to raise additional grounds before the High Court and the High Court shall examine the same if additional grounds are so raised.

26. It appears appropriate that the second appeal be placed before a Division Bench for the High court for hearing. It is so directed. The appeal is disposed of accordingly without an order as to costs.

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