

C. B. Gautam

Vs

Union of India and Others

I. A.No. 2 of 1992 in Transferred Case No. 26 of 1987

(M.N. Venkatachaliah, J.S. Verma, S.C. Agarwal, Yogeshwar Dayal, Dr. A.S. Anand JJ)

27.11.1992

ORDER

1. Union of India has moved this application for certain clarifications and directions with a view to obviating certain difficulties that it envisages in applying the principles laid down in the main judgment dated 17-11-1992\* by the Constitution Bench to cases other than the case of the particular petitioner in that case. We have heard learned Solicitor General in support of this application.

\*Reported in 1992 (6) JT (SC) 678

2. Our attention was drawn to two aspects : one in relation to the large number of similar petitions yet pending before this Court and the various High Courts where, in view of the subsisting orders of stay operating therein, it would not be possible immediately to take steps and implement the directions contained in the judgment within the time-frame stipulated therein. The second aspect relates to pending matters before the authorities, which, though not pending before courts, do not also admit of application of the principles consistent with the statutory limit. After hearing the learned Solicitor General, we are satisfied that the problems and difficulties envisaged, in practical terms, are real and require to be provided for.

3. The first aspect arises out of the limited retrospectivity imported by the judgment. The judgment provides that:

"In order to avoid that situation and, yet to ensure that no injustice is caused to the petitioner, we order, in the facts and circumstances of the case, that the statement in Form 37-I submitted by the petitioner as set out earlier shall be treated as if it were submitted on the date of signing of this judgment."

Learned Solicitor General points out that in the cases where petitions are yet pending in this Court as well as in the various High Courts, the above direction becomes unworkable inasmuch as the interim orders subsisting in those petitions disable the authorities to carry out the directions contained in the judgment within the stipulated time-frame and that, therefore, the directions as given in the judgment become impossible of implementation. Learned Solicitor General suggests that, in order that the principles laid down in the judgment become workable in all other pending cases before the Courts, a clarification be made to the effect that in respect of all such cases pending before this Court and the various High Courts, the time-frame for affording of opportunity of being heard shall be reckoned from the date of the actual disposal of those matters by this Court or the High Court, as the case may be. We think that this clarification in the form of a further direction is necessary for a proper implementation of the principles laid down in the judgment. We, accordingly,

clarify by this supplemental direction to be read as part of the judgment that in respect of cases other than that of petitioner - C.B. Gautam, the period of two months referred to in S. 269UD (1) shall be reckoned with reference to the date of disposal of each of such pending matters either before this Court or before the High Courts as the case may be. Where, however, the stay orders inhibiting the authorities from taking further proceedings are vacated, the period referred to in the said S. 269 UD (1) shall be reckoned with reference to the date of such vacating of the stay orders. This clarification and further direction shall be supplemental to and be treated as parts of the main judgment.

4. The second clarification sought is in respect of matters pending before the authorities and which though not agitated in courts of law, are pending at various stages before the authorities in all such cases. We direct that Form 37-I shall be deemed to have been filed as on the date of the judgment of this Court dated 17th November, 1992 for purposes of completion of proceedings in terms of Section 269UD (1). This further direction shall also be a part of the main judgment.

5. Certified copy of the main order as well as this order of clarification shall be made available to all those who seek such certified copies against payment. Order accordingly.

</html