SUPREME COURT OF INDIA

Haryana State Co.op. Land Devpt. Bank Ltd.

Vs.

Haryana State Co.op Land Devpt. Banks Emp. Union

Special Leave Petition (civil) 3729 of 2003

(Doraiswamy Raju and Arijit Pasayat JJ.)

18.12.2003

JUDGEMENT

ARIJIT PASAYAT, J.

Delay condoned.

Leave granted.

The pivotal issue involved in this appeal relates to the question as to whether the employees working with Primary Agricultural Cooperative Banks (in short 'Primary Banks') are entitled to bonus at the same rate at which it was paid to employees working in the Apex Bank (also described as 'State Bank') i.e. The Haryana State Cooperative Land Development Bank Limited. The Apex Bank is governed by the Haryana Cooperative Society Act, 1984 (in short the 'Act'). The appellant transacts its business mainly through Primary Banks which are its members. The members of the

Apex Bank belonging to the area of operation of the particular Primary Bank automatically become members of the concerned Primary Bank from the date of registration. Staff of the Primary Banks except class IV employees are drawn from the Apex Bank out of the cadre maintained by it in terms of clause 70 of the model by- laws applicable to the Primary Banks. The respondent no.1-union raised a demand stating that it is entitled to bonus at the rate applicable to employees of the Apex Bank. The claim was resisted by the Primary Banks on the ground that they are separate entities with separate Balance Sheet and Profit and Loss accounts and have a distinct cooperative and corporate identity under the Act and, therefore, is not required to pay bonus at the same rate as the employees of the Apex Bank in terms of Payment of Bonus Act, 1965 (in short 'the Act'). Accepting the writ petition filed by respondent no.1-union, learned Single Judge of the Punjab and Haryana High Court directed payment of bonus at the rate payable to the staff working with the Apex Bank, which is also described as the State Bank in the rules framed by the Registrar of Cooperative Societies under Section 37(2) of the Act. The view was confirmed by a Division Bench in Letters Patent Appeal by the impugned judgment.

Mr. P.P. Rao, learned senior counsel, appearing for appellant-Bank submitted that the High Court lost sight of third proviso to Section 34 of the Act, which clearly stipulated that the minimum bonus was 8.33 per cent of the salary or wages earned by the employee concerned during the accounting year, if the employer has no allocable surplus in the accounting year or the amount of such allocable surplus is only that which for the proviso to sub-section (2A) of Section 10 would entitle the employees only to receive the amount of bonus which is less than the aforesaid percentage.

It was submitted that the High Court erroneously held that Rule 21 has overriding effect vis-vis the aforesaid provision. It was further submitted that merely because the members of the staff were drawn from the Apex State Bank, it does not mean that they continued to be the employees of the State Bank. On the contrary, they are employees of the Primary Bank with different service conditions. It was further submitted that if really allocable surplus was to be taken as a whole including the financial results of both the Apex Bank and the primary Banks for payment at par with that of the employees of the Apex Bank, then there has to be aggregation of the profits of the Primary Banks which are running at loss with that of the Apex Bank. Unless that is done there was no rationale for the direction given by the High Court to pay at par with the employees of the Apex Bank.

Per contra, learned counsel for the respondent no.1-union submitted that the High Court has correctly analysed the legal position.

In any event, the appellant itself was adopting the formula approved by the High Court in terms of Rule 21. Reference was made to certain correspondences made by the Managing Director in the matter of bonus i.e. letter dated 28.8.1980 (relating to payment of bonus for year 1978- 79).

In order to appreciate the rival submission a few provisions need to be noted. Sections 3, 10, 34 and 34-A are as under:

"3. Establishment to include departments undertakings and branches:- Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings of branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act.

Provided that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respondent of any such department or undertaking or branch then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of compensation of bonus under this Act for that year, unless such department or undertaking or branch was immediately before the commencement of that account year treated as part of the establishment for the purpose of computation of Bonus.

10. Payment of Minimum Bonus Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year a minimum bonus which shall be 8.33 per cent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employee has any allocable surplus in the accounting year.

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year the provisions of this Section shall have effect in relation to such employee as if for the words "one hundred rupees" the words "sixty rupees" were substituted.

34. Employees and employers are to be precluded from entering into agreements for grant of bonus under a different formula Nothing contained in this Act shall be construed to preclude employees employed in any establishment or class of establishments from entering into agreement with their employer for granting them an amount of bonus under a formula which is different from that under this Act.

Provided that no such agreement shall have effect unless it is entered into with the previous approval of the appropriate Government.

Provided further that any such agreement whereby the employees relinquish their rights to receive

the minimum bonus under sub-section (23A) of Section 10 shall be null and void and in so far it purports to deprive them of such right;

Provided also that such employees shall not be entitled to be paid bonus in excess of (a) 8.33 per cent of the salary or wage earned by them during the accounting year if the employer has no allocable surplus in the accounting year or the amount of such allocable surplus is only so much that, but for the provisions of sub- section (2A) of Section 10, it would entitle the employees only to receive an amount of bonus which is less than the aforesaid percentage; or (b) Twenty per cent of the salary or wage earned by them during the accounting year.

34A. Effect of laws and agreements inconsistent with the Act Subject to the provisions of Section 31A and 34, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement, settlement, or contract of service." Third proviso to Section 3 makes it clear that where for any accounting year, a separate Balance Sheet and Profit and Loss account are prepared and maintained in respect of any department or undertaking or branch, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under the Act for that year, unless for the previous period such department or undertaking or branch was treated as a part of the establishment for the purpose of computation of bonus. Similarly, third proviso to Section 34 deals with modalities for working out entitlement for bonus.

The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Survey [1880 (5) QBD 170, (referred to in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha (AIR 1961 SC 1596) and Calcutta Tramways Co. Ltd. v. Corporation of Calcutta (AIR 1965 SC 1728); when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso.

The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to occur in it you cannot derive these provisions by implication from a proviso." Said Lord Watson in West Derby Union v. Metropolitan Life Assurance Co. (1897 AC 647)(HL).

Normally, a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (See A.N.

Sehgal and Ors. v. Raje Ram Sheoram and Ors. (AIR 1991 SC 1406), Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal and Ors. (AIR 1991 SC 1538) and Kerala State Housing Board and Ors. v. Ramapriya Hotels (P)Ltd. and Ors. (1994 (5) SCC 672).

"This word (proviso) hath divers operations. Sometime it worketh a qualification or limitation; sometime a condition; and sometime a covenant" (Coke upon Littleton 18th Edition, 146) "If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant, and the earlier clause prevails....But if the later clause does not destroy but only qualifies the earlier, then the two are to be read together and effect is to be given to the intention of the parties as disclosed by the deed as a whole" (per Lord Wrenbury in Forbes v. Git [1922] 1 A.C. 256).

A statutory proviso "is something engrafted on a preceding enactment" (R. v. Taunton, St James, 9 B. & C. 836).

"The ordinary and proper function of a proviso coming after a general enactment is to limit that general enactment in certain instances" (per Lord Esher in Re Barker, 25 Q.B.D. 285).

A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meanings it may be controlled by the proviso (See Jennings v. Kelly [1940] A.C. 206).

The above position was noted in Ali M.K. & Ors. v. State of Kerala and Ors. (2003 (4) SCALE 197).

The allocable surplus is an amount calculated out of the available surplus. How the available surplus is to be computed is provided under Section 5 of the Act. It is determined after deducting from the gross profit such amounts as are detailed in Section 6 of the Act. The inevitable result is that the gross profit has to be worked out and therefrom the prior charges mentioned in clauses (a) to (d) of Section 6 are to be deducted. Gross profit is determined in terms of Section 4 of the Act. In case of non-banking companies, it is calculated in the manner prescribed in the Second Schedule while in case of banking company it is calculated in the manner specified in the First Schedule.

The payment of minimum bonus is provided in Section 10 of the Act and is fixed at 8.33 percentage of the salary or wages earned by the employee.

The entitlement of higher bonus comes in case the allocable surplus permits payment of higher bonus in terms of the applicable formula. A reading of the impugned judgment shows that the High Court was of the view that Rule 21 had overriding effect vis-vis Section 34, by referring to Section 34-A of the Act. The view is clearly untenable.

Rule 21 was interpreted to mean as if all other provisions of the Act had to give way to Rule 21. It is really not so. Sections 34 and 34-A make the position clear. The Primary Banks have independent corporate existence and were undisputedly maintaining separate Balance Sheet and Profit and Loss account. Therefore, proviso to Section 3 of the Act has full application. Unfortunately, the High Court did not take into account the effect of the proviso to Section 3, and third proviso to Section 34.

As noted above, separate books of accounts were maintained and separate Balance Sheet and Profit and Loss account were prepared. The primary co-operative banks are distinct cooperate entities with their own respective registration or Incorporation. As observed by this Court in M/s. Alloy Steel Project v. The workmen (1971 (1) SCC 536) and The K.C.P. Employees' Association, Madras v. The Management of K.C.P. Ltd., Madras and Ors. (1978 (2) SCC 42), where in a company having number of undertakings separate accounts are kept for each separate undertaking though it is not a requirement of the Companies Act, 1956 (in short 'the Company Act'), they shall be treated as different undertakings for the purpose of the Act. These aspects do not appear to have been considered by the High Court which erroneously proceeded to hold about Rule 21 having overriding effect over Section 34. Rules are framed under Section 32 of the Act. Therefore, question of Rules have overriding effect does not arise.

Coming to the relevance of documents referred to by the respondent no.1 it is to be seen that those relating to a period when the Primary Banks were earning profits. Presently, admittedly, the Primary Banks are incurring losses, and there is no allocable surplus.

That being the position, the documents in question do not help the respondents in any event.

The impugned judgment is indefensible and is set aside and the writ petition filed before the High Court shall stand dismissed. The appeal succeeds, but in the circumstances without any order as to costs.