

PUNJAB AND HARYANA HIGH COURT

Kulbhushan Kumar

Vs

State of Punjab

Civil Miscellaneous No. 1279 of 1982 in Civil Writ Petition No. 1818 of 1982

(S.S. Sandhawalia, C.J., P.C. Jain and S.C. Mittal, JJ.)

23.08.1983

JUDGMENT

S.S. Sandhawalia, C.J.

1. Would one of the ratios in the Full Bench judgment of *M/s. Indo Swiss Time Limited v. Umrao*¹, still hold the field - is the significant question that has necessitated this reference to the larger Bench.

2. To appreciate the aforesaid question in its correct perspective a somewhat detailed notice of the facts is called for. Messrs. Kulbhushan Kumar and Co--the writ petitioners, had challenged the acquisition proceedings initiated by a notification (Annexure P/3) under Section 4 of the Land Acquisition Act, 1894 (hereinafter called 'the Act') for the public purpose of the expansion of Saluja Spinning and Weaving Mills for the manufacture vide notification (Annexure P.5), dated March 17/18, 1982. Later M/s. Saluja Spinning and Weaving Mills Private Limited for whose benefit the acquisition was to be made, filed the present application under Order 1, Rule 10 of the Civil Procedure Code, for being impleaded as a respondents in the Civil Writ Petition. This application was opposed on behalf of the writ petitioners. Undoubtedly, the matter was concluded against the applicants by the Full Bench in *M/s. Indo Swiss Time Ltd.'s* case (supra). This was indeed so noticed by the learned Single Judges of the referring Bench in the following terms :-

"In view of the above Full Bench decision, the application filed by the Spinning Mills could have been disposed of in terms of the ratio of the Bench decision."

However, reliance on behalf of the Spinning Mills was sought to be placed on a short observation of their Lordships of the Supreme Court in *Punjab United Pesticides and Chemicals Limited v. Puran Singh*², decided on January 11, 1982. In view of the affirmance therein of the earlier judgment in *Himalaya Tiles and Marbles (P) Limited v. Francis Victor Coutindo*³, the referring Bench observed that a question had arisen whether on the specific point, the Full Bench decision in *M/s. Indo Swiss Time Limited's* case (supra) was to be followed as a correct view of the proposition of law and therefore, suggested an authoritative consideration of the matter by a

larger Bench.

3. Inevitably one must first advert to the true ratio of the Full Bench in *M/s. Indo Swiss Time Limited's case* (supra) . Therein after an exhaustive consideration five clear-cut propositions were laid down. It was unanimously held:-

(i) Where two co-equal Benches of a superior Court were in headlong conflict, it is incumbent for the Courts below to examine and follow that judgment which lays down the law more correctly and accurately;

(ii) the fact that one or the other of the conflicting judgments have been rendered earlier or later, was irrelevant and extraneous to the issue;

(iii) that the ratio of the judgments of the co-equal Benches of their Lordships in *Municipal Corporation of the City of Ahmedabad v. Chandulal Himalaya Tiles and Marbles (P) Limited v. Francis Victor Coutinho*⁴, were directly in conflict with each other and were irreconcilable.

Further, it was held by majority:-

(iv) that the *Municipal Corporation of the City of Ahmedabad* (supra) was in consonance with the earlier long line of precedent in the High Court and laid down the law more accurately and correctly and the same should be followed in preference to the view in *Himalaya Tiles and Marbles Ltd.*, and

(v) that the company or the firm for whose benefit the land was sought to be acquired under the Act was not a 'person interested' and an application on its behalf for being impleaded as a party to the proceeding was not legally maintainable.

4. For clarity's sake it must be pointed out that only propositions Nos. (iv) and (v) aforesaid are in issue and the threshold question is--whether these considered ratios of the Full Bench in *M/s. Indo Swiss Time Limited's case* (supra) stand over ruled by the brief observation in *Punjab Unites Pesticides and Chemicals Limited's case* (supra). In the said case whilst granting special leave to appeal, their Lordships in order to avoid any further delay in the matter allowed the appeal *ex parte* because no appearance or opposition had been raised on behalf of the respondents. All rent was recorded in the order was as under :-

"Nobody appears from the other side despite service. As the case is concluded by our decision in *Himalaya Tiles and Marbles (P) Limited v. Francis Victor Coutinho (dead) by L.Rs*⁵., in which it was clearly held that any Company for whose benefit the land is acquired is undoubtedly an interested person, hence the petitioner had a right to be added as a party to the proceedings and the L.P.A. Bench was wrong in rejecting the prayer of the petitioner in *limine*. In view of the decision referred to above, the petitioner being an interested party is entitled to participate on the question of quantum of compensation in the proceedings before the District Judge. To avoid any further delay we allow this appeal, set aside the order of the High Court and remit the matter to the District Judge

who shall fix the quantum of compensation after hearing the petitioner. The District Judge will decide the case after issuing notice to the parties. No costs."

It would thus be manifest and is otherwise the admitted position that in the *Punjab United Pesticides and Chemicals Limited's case* (supra), the Special Leave Petition and the appeal were directed against a limine order of dismissal by a Letters Patent Bench of this High Court. The afore-quoted short observations of their Lordships make it plain that the correctness or otherwise of the Full Bench in *M/s. Indo Swiss Time Limited's case* (supra) was not even remotely canvassed before their Lordships. Indeed, even the barest reference thereto is conspicuous by its absence and obviously it was never brought to their Lordships' notice. It is well settled that a Full Bench judgment cannot be presumed to have been expressly overruled, which far from being considered has not been even referred to by the superior Court. Consequently, we do not consider the order of their Lordships in *Punjab United Pesticides and Chemicals Limited's case* (supra), as either an express or implied overruling of the *M/s. Indo Swiss Time Limited's case* (supra).

5. It then calls for pointed notice that the order *Punjab United Pesticides and Chemicals Limited's case* (supra) was again passed by a Bench of two Judges only. It has to be recalled that in the *M/s. Indo Swiss Time Limited's case* (supra), it was categorically held that in the case of a conflict of co-equal Benches of a Superior Court, the fortuitous circumstance of a judgment having been rendered earlier or later does not in any way add to its weight or makes it more binding by the accident of time. Therefore, the basic question of the conflict of ratios in the co-ordinate Benches of the Municipal Corporation of the City of Ahmedabad's case (supra) on one side and that in the *Himalaya Tiles and Marbles (P) Limited's case* (supra), on other continued to exist. It is common ground that the Municipal Corporation of the City of Ahmedabad's case (supra) was neither considered or referred to in the *Himalaya Tiles and Marbles (P) Limited's case* (supra) or even remotely in the *Punjab United Pesticides and Chemicals Limited's case* (supra). Consequently, the ratio of Municipal Cororation of the City of Ahmedabad's case (supra) (and the long line of the High Court precedents on which it was rested), could not be either overruled or overridden by co-equal Benches. It appears to me as axiomatic that merely following or reiterating an earlier judgment by a co-ordinate bench does not in any way enhance its weight or its binding nature in the event of its patent conflict with a hierarchy of co-equal Benches. For these added reasons also we are inclined to hold that the observations in *Punjab United Pesticides and Chemicals Limited's case* (supra), have neither over- ridden nor obliterated the earlier ratio in *Municipal Corporation of the City of Ahmedabad's case* (supra) and equally that of the majority view in *M/s. Indo Swiss Time Limited's case* (supra) which in express terms had followed the same.

6. Yet again, it deserves highlighting that the reference order herein was rendered on May 28, 1982, and was rested entirely on the observation in *Punjab United Pesticides and Chemicals Limited's case* (supra). However, the learned counsel for the parties brought to our notice that nearly one year earlier's Special Leave Petition against the Full Bench Judgment was decided by compromise before their Lordships of the Supreme Court in *M/s. Indo Swiss Time Limited v. Chhelu Ram*⁶, Therein, the short order recorded was in the following terms:-

"It is agreed by all the parties that the Company for whose benefit the acquisition has been made, viz. *M/s. Indo Swiss Time Limited's* may be impleaded as a party to the proceedings. The application made by the appellant under Order 1 Rule 10 Civil

Procedure Code to the District Judge will stand allowed. The matter may be disposed of expeditiously by the learned District Judge.

Special leave to Appeal granted and the appeals are allowed in the manner indicated above with no order as to costs."

On the aforesaid premise also, it was sought to be contended before us that because of the said agreed order consequent upon a compromise by the parties, the ratio of the Full Bench in *M/s. Indo Swiss Time Limited's* case (supra) was wiped off the record. We are unable to agree. That judgment had laid down certain basic principles with regard to the doctrine of precedent as also elaborated the import of "a person interested" under the Land Acquisition Act who could claim to be impleaded in proceedings thereunder. The majority view with regard to the latter question (on the earlier one) there was unanimity in the Full Bench) had preferred to follow Municipal Corporation of the City of Ahmedabad's case (supra) in preference to the Himalaya Tiles and Marbles (P) Limited's case (supra). If by the agreement of all the parties to the case, the Company was allowed to become a party to the proceedings, one fails to see how the rationale and the ratio of the Full Bench is obliterated. A mere agreement of the parties in our view, would not abrogate the principles of law enunciated by the Court unless it is in terms overruled by the Superior court. Whilst this appears to us as somewhat plain on principle, it follows equally by way of analogy from *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Corporation of Calcutta*⁷, (Para 10 of the report), *Venkanna Narasinha v. Laxmi Sannappa*⁸, (Para 15) and *Pramod C. Bhat v. Kanvar Raj Nath*⁹, (Para 13). Thereby, it is laid down that a concession of law by parties or their counsel, without more would not affect the ratio of existing precedent. If that be so, a joint concession in the shape of an agreement or compromise seeking a consensual order could not possibly wipe away the precedential value of the judgment. It has been authoritatively held in *Quinn v. Leathem*¹⁰, followed in *State of Orissa v. Sudhansa Sekhar Misra*¹¹, that the ratio of a judgment is the logic and reasoning thereof can be displaced only by an identical exercise or a conclusive finding to the contrary of the superior court. Therefore, the agreed order in *M/s. Indo Swiss Time Limited's* case (supra) before their Lordships of the Supreme Court, does not in my view remotely alter the situation or affect the precedential value of the earlier Full Bench. We would, in terms, wish to notice that before us, the learned counsel for the petitioners did not even hint at any challenge to the correctness or otherwise of the ratio in *M/s. Indo Swiss Time Limited's* case (supra).

7. We cannot help noticing counsel for the parties seemed to be somewhat remiss both in the *Punjab United Pesticides and Chemicals Limited's* case (supra), as also directly in *M/s. Indo Swiss Time Limited's v. Chhelu Ram*¹², in not pointedly bringing to the notice of their Lordships the conflict of co-ordinate Benches in Municipal Corporation of the City of Ahmedabad's case (supra) and that in the Himalaya Tiles and Marbles (P) Ltd.'s case (supra). The majority view in the Full Bench in *M/s. Indo Swiss Time Limited's* case (supra) was rested wholly on the Municipal Corporation of the City of Ahmedabad's case (supra). It is to be hoped that the matter having now come up for pointed consideration, their Lordships would, in the near future, have the occasion to resolve the conflict and lay down the law with finality on this significant point of somewhat daily occurrence.

8. To conclude, the answer to the question posed at the very outset is rendered in the affirmative. It is held that the ratio in *M/s. Indo Swiss Time Limited's* case (supra). Indeed we would wish to

record that no independent plea whatsoever for the reconsideration of the Full Bench or any attack on its rationale was even raised before us. As has already been noticed, the referring Bench had itself opined that the application filed by the Spinning Mills could have been disposed of in terms of the ratio of the Full Bench. We accordingly direct that the case would now go back to the Division Bench for a decision on merits.

Reference answered.

Cases Referred.

1AIR 1981 Pun and Har 213
2Special Leave Petition No. 5389 of 1981
3AIR 1980 SC 1118
4AIR 1980 SC 1118
5 1980(3) S.C.R. 235
61982 P.L.J. 407
7AIR 1967 SC 997
8AIR 1951 Bom 518
9AIR 1954 Bom 518
101901 A.C. 495
11AIR 1968 SC 647
121982 P.L.J. 407