

PETITIONER:
MUNSHI LAL BENI RAM GLASS WORKS

Vs.

RESPONDENT:
S. R. SINGH, ASSISTANT LABOUR COMMISSIONER AND OTHERS

DATE OF JUDGMENT:
27/10/1969

BENCH:

ACT:
Uttar Pradesh Industrial Disputes (Amendment and Miscellaneous Provisions) Act XXIII of 1957, s. 16-If s. 16 refers to s. 6A as it stood prior to amendment of s. 6A by U.P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (1 of 1957)-General Clauses Act, 1860 s. 6-Award-State Government's power to enforce.

HEADNOTE:

The State Government, purporting to, act under ss. 3, 4 and 8 of the U.P. Industrial Disputes Act, 1944 referred a dispute in the appellant's factory to an adjudicator who gave his award on December 31, 1957. On January 28, 1958, the Government passed an order enforcing the Award, under ss. 3 and 6(12) of the Act. The Award was challenged by means of a writ petition in the High Court. A single Judge of the High Court allowed the writ petition holding that the State Government had no power to enforce the Award in question. According to the single Judge the old s. 6 having been replaced by a new s. 6 by U.P. Act 1 of 1957 it was not a case of repeal simpliciter and therefore old s. 6 could not be resorted to by relying on s. 6(e) of the General Clauses Act. A Division Bench, in appeal, reversed the order of the single Judge and dismissed the writ petition. On the question whether s. 6A as mentioned in s. 16 of the U.P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (U.P. 1 of 1957) as amended by U.P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act XXIII of 1957 refers to s. 6A as it stood in U.P. Act XXVIII of 1947 prior to its amendment by U.P. Act 1 of 1957 or as it emerged after the said amendment,

HELD:(i) By U.P. Act 1 of 1957 s. 6A was replaced by new s. 6A which came into force from April 16, 1957. Prima facie the amendment in s. 16 made in November 1957 by U.P. Act XXIII of 1957 should be referable to s. 6A in the form in which it existed on the date of the enforcement of Act XXIII of 1957. But looking at the position as it stood on April 16, 1957 it would be seen that s. 16 was designed to save the pending proceedings from the operation of U.P. Act 1 of 1957 itself. If this Act was held to be inapplicable then s. 6A as amended thereby would be excluded and that section as it stood prior to the amendment by U.P. Act 1 of 1957 would automatically be attracted. To uphold the view of the learned single Judge would render awards like the one in the present case unenforceable which intention is difficult to attribute to the legislature. On the adjudication of the dispute the provision of s. 6A would be attracted and thereunder the State Government could enforce the Award. [32 C-F]

(ii) The broad proposition that section 6 of the General Clauses Act is ruled out whenever there is a repeal of any enactment followed by a fresh legislation, cannot be accepted. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the proposition of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material. [33 G-34 B]

28

State of Punjab v. Mohar Singh, [1955] 1 S.C.R. 893 referred to.

(iii) The contention that the decision of the adjudicator is not an "award" as defined in s. 2(c) of the U.P. Industrial Disputes Act, as amended by Act 1 of 1957 has no force. If U.P. Act 1 of 1957 is excluded from its application to pending proceeding under s. 16, then the word "award" has to be liberally construed and so construed it would be covered by s. 6A. The power conferred by s. 16 and 6A has to be construed as real and not illusory and it has to be interpreted so as to achieve the purpose for which it was conferred. [33 D-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1706 and 1707 of 1968.

Appeals from the judgment and decree dated May 7, 1964 of the Allahabad High Court in Special Appeals Nos. 77 and 118 of 1960.

G. N. Dikshit, for the appellant (in both the appeals).

J. P. Goyal and S. N. Singh, for respondent No. 3 (in C.A. No. 171)6 of 1968) and respondent No. 1 (in C.A. No. 1707 of 1968).

C. B. Agarwala and O. P. Rana, for respondent No. 1 (in C.A. No. 1706 of 1968) and respondent No. 2 (in C.A. No. 1707 of 1968).

The Judgment of the Court was delivered by

Dua, J. In these two appeals on certificate of fitness, challenge is directed against the view taken by a Division Bench of the Allahabad High Court on appeal in disagreement with that of a learned Single Judge of that Court on the interpretation of s. 16 of the U.P. Industrial Disputes Act of 1957 and s. 6A of U.P. Industrial Disputes Act of 1947.

The relevant facts may first be briefly stated. In June 1956 there was a strike in the glass factory of the appellant, M/s. Munshi Lal Beni Ram Glass Works, at Ferozabad. As a result the factory was closed down for some time. In August 1956 a settlement was reached with the workers and it became possible to reassume operations from August 31, 1956. The workers were asked to report personally, latest by August 26, 1956, to show their willingness to work. According to the appellant, Lal Khan, one of the workers, failed to register his willingness to work before the appointed day, and indeed he did not care to report in spite of a messenger having been sent to him requiring his attendance. In his place one Jang Jit was thereupon employed and intimation of this fact duly sent to Lal Khan. This gave rise to a controversy between Lal Khan and the employers with the result that the State Government purporting to act under ss. 3, 4 and 8 of U.P. Indus-

29

trial Disputes Act referred the following dispute to the

Adjudicator :

"Whether the employers have wrongly and/or unjustifiably refused employed to Shri Lal Khan with effect from 28/29th August, 1957 ? If so, to what relief is he entitled ?

Soon after the reference the appellant presented a writ petition in the Allahabad High Court, (C.W. No. 899 of 1957) challenging its validity principally on the ground that there was no industrial dispute within the contemplation of the Industrial Disputes Act. As interim, stay of the proceedings was declined, the proceedings before the adjudicator continued and on December 31, 1957 the adjudicator gave his award. This was followed by an order of the State Government dated January 28, 1958 enforcing the award under ss. 3 and 6(2) of the U.P. Industrial Disputes Act, 1947. The award and the order of the State Government were also challenged by the appellant by means of a writ petition in the High Court (C.W. No. 1025 of 1958). Though principally in this writ petition the power of the State Government to enforce the award was questioned, challenge to the order of reference was also reiterated. A learned Single Judge allowed this later writ petition on January 28, 1958, holding that the State Government had no power to enforce the award in question. According to the learned Single Judge the old s.6 having been replaced by a new section 6 by U.P. Act 1 of 1957, it was not a case of repeal simpliciter and therefore old s. 6 could not be resorted to by relying on s.6(e) of the General Clauses Act.

On the matter having been taken on special appeal a Division Bench of the High Court following its earlier decision reported as Central Distillery and Chemical Works Ltd. Meerut v. State of U.P. (1) reversed the order of the learned Single Judge and dismissed the writ petition.

The short question, the determination of which is decisive of these appeals, is whether s.6A as mentioned in s.16 of the U.P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (U.P. Act 1 of 1957) as amended by U.P. Industrial Disputes (Amendment and Miscellaneous Provisions) Act XXIII of 1957, refers to s.6A as it stood in U.P. Act XXVIII of 1947 prior to its amendment by U.P. Act 1 of 1957 or as it emerged after the said amendment. The learned Single Judge construed it to mean as it stood before the amendment of U.P. Act 1 of 1957 whereas according to the two Bench decisions Section 16 refers to s. 6A as amended by U.P. Act 1 of 1957. We are required to determine which of these two views is correct,

(1) A.I.R. 1964 All. 156.

30

Section 16 of U.P. Act 1 of 1957 as it stood prior to its amendment by U.P. Act XXIII of 1957 ran as follows:

"Saving. 16. If immediately before the commencement of this Act, there is pending any proceeding in relation to an industrial dispute before any authority constituted under the U.P. Industrial Disputes Act, 1947, as in force before such commencement, the dispute may be adjudicated and the proceeding disposed of by that authority after such commencement, as if this Act had not been passed."

After amendment by U.P. Act XXIII of 1957, this section read thus

"Saving. 16. If immediately before the commencement of this Act, there is pending any proceeding in relation to an industrial dispute before any authority constituted under

the U.P. Industrial Disputes Act, 1947, as in force before such commencement, the dispute may be adjudicated and the proceeding disposed of by that authority after such commencement, as if this Act had not been passed, and the provisions of section 6-A of the Principal Act shall remain enforceable with reference to such a proceeding.

The words added as a result of the amendment by U.P. Act XXIII of 1957 had been deleted by this very amending Act from sub-section 2 of s.17 of U.P. Act 1 of 1957.

We may now turn to the history of S. 6-A. This section was inserted in the U.P. Industrial Disputes Act XXVIII of 1947 by the U.P. Industrial Disputes Act XXIII of 1953 in the following form :

"6-A. Where any period is specified or is required to be specified in any order made under or in pursuance of this Act referring any industrial dispute for adjudication with in which the award shall be made, declared or submitted it shall be competent for the State Government from time to time, to enlarge such period even though the period originally fixed or enlarged may have expired or the award made."

This amendment had retrospective effect because it was to be deemed to have always been added in the U.P. Industrial Disputes Act 1 of 1947 which was described as the "Principal Act". In 1957 by means of U.P. Act 1 of 1957 which extensively amended the Act 1 of 1947, s.6-A was replaced by the following new section 6-A.

31

"6-A. Commencement of the Award-(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under Section 6 Provided that if the State Government is of the opinion that it will be inexpedient, on grounds of social justice, to give effect to the whole or any part of the award, the State Government may, by notification in the official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days :

Provided further that an arbitration award shall not become enforceable where the State Government -after such enquiry as it considers necessary, is satisfied that the same has been given or obtained through collusion, fraud or misrepresentation.

(2) Where any declaration has been made in relation to an award under the first proviso to sub-section (1) the State Government may within ninety days from the date of publication of the award under Section 6, make an order recting or modifying the award, and shall on the first available opportunity lay the award together with a copy of the order-before the Legislature of the State.

(3) Where any award as rejected or modified by an order made under sub-section (2) is laid before the Legislature of the State, such award shall become enforceable on the expiry of fifteen days from the date on which it is so laid and where no order under subsection

(2) is made in pursuance of a declaration under the first proviso to sub-section (1), the award shall become enforceable on the expiry of the period of ninety days referred to in sub-section(2).

(4) Subject to the provisions of sub-sections (1) and (3) regarding the enforceability of an award, the award shall come into operation with effect from such date as may be specified therein, but where no date is specified it shall come into operation on the date when the award becomes enforceable under sub-section (1) of sub-section (3) as the case may be."

This enactment was enforced with effect from April 16, 1957. The U.P. Act XXIII of 1957 which was published in the Government Gazette on November 3, 1957, as noticed earlier, amended S-16. Prima facie this amendment in s. 16 made in November,
32

1957 should be referable to section 6-A in the form in which it existed on the date of the enforcement of the amending Act in question (U.P. Act XXIII of 1957). It was contended on behalf of the appellant that the very fact that the amendment of S. 16 was retrospective so as to date back to April 16, 1957 when S. 16 itself was originally enacted, indicates that s. 6-A as it existed prior to April 16, 1957 was intended to be kept alive. Now looking, at the position as it stood on April 16, 1957, it would be seen that s.16 was designed to save the pending proceedings from the operation of U.P. Act No. 1 of 1957 itself. If this Act was held to be inapplicable, then s. 6-A as amended thereby would be excluded and that section as it stood prior to the amendment by U.P. Act No., 1 of 1957 would automatically be attracted. The question arises : where was then the occasion to provide specifically for applying to the pending proceedings s.6-A as it stood before U.P. Act No. 1 of 1957 ? It may, of course, be contended that it was so done by way of abundant caution. To us, however, it seems that to specifically incorporate s.6-A in s.16 in this situation is suggestive of the intention of the Legislature to extend the amended s.6-A to the proceedings contemplated by s.16. The enactment under consideration is not an example of ideal draftsmanship and the provisions under consideration may admit of two constructions. Assuming the two constructions to be possible we are not satisfied that the construction placed on this provision by the two Benches of the Allahabad High Court is clearly erroneous justifying reversal of the view taken therein and thereby unsettling the legal position. On the other hand to uphold the view of the learned Single Judge would also render the awards like the present unenforceable, which intention is difficult to impute to the Legislature. And then this point is not likely to arise very frequently in future, the matter being confined only to the cases which were pending when U.P. Act No. 1 of 1957 was enforced. The enactment is also confined in its operation to the State of U.P. alone.

The appellant's counsel next contended that the proceeding in question pending with the adjudicator could not be considered to be pending with the State Government and the State Government could not give effect to the decision of the adjudicator under s.16. It was argued that it was only the Authority before which the proceeding was actually pending immediately after the commencement of U.P. Act No. 1 of 1957 which was empowered to dispose it of and the

proceeding in the present case being pending before an adjudicator, the State Government could not claim any power under this section. It was added that the State Government could also not be treated as the authority constituted under the said Act. In our opinion the proceeding in question was clearly -pending before the adjudicator as contemplated by s.16. The

33

adjudicator, therefore, could plainly proceed to. adjudicate upon the dispute. On his a judicious the provisions of s.6-A would be attracted and thereunder the State Government could enforce it. This submission of the appellant is, therefore, repelled. On the view that we have taken it is not necessary to decide whether the State Government is an authority constituted under the Act as envisaged by s.16 and also whether the proceeding in question could be considered to be pending before the State Government.

The appellant's counsel also submitted that without resort to s.17 of U.P. Act No. 1 of 1957 the award could not be enforced. This argument too need not detain us as it does not arise on the view we have taken. We may, however, point out that s. 17 only provides for delegated legislation in certain circumstances and resort to s. 17 is not essential, or a condition precedent for enforcing the awards, as suggested on behalf of the appellant.

The appellant's learned Advocate as a last resort submitted that the decision of the adjudicator is not an 'award' as defined in s.2(c) of the U.P. Industrial Disputes Act as amended by U.P. Act No. 1 of 1957. Now if U.P. Act No. 1 of 1957 is excluded from its application to pending proceeding under s.16 then the word 'award' has to be liberally construed and so construed it would be covered by s. 6-A. The power conferred by ss. 16 and 6A has to be construed as real and not illusory and it has to be interpreted so as to achieve the purpose for which it was conferred.

We must not be understood to accord our approval to the view of the learned Single Judge that s.6 of the Principal Act having not been repealed simpliciter, but having been replaced by a new section 6 by U.P. Act 1 of 1957, the principle underlying s.6(e) of the General Clauses Act cannot be attracted. In our opinion, this approach is not quite correct. Section 6 would seem to us to apply to a case of repeal even if there is a simultaneous enactment unless a contrary intention appears from the new enactment. As observed by this Court in the State of Punjab v. Mohar Singh(1) whenever there is a repeal of an enactment, the consequences laid down in section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention

(1) [1955] 1 S.C.R. 893.

34

to destroy them. We cannot therefore subscribe to the broad proposition that section 6 of the General Clauses Act is ruled out whenever there is a repeal-,of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the

proposition of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material.

The result is that these appeals fail and are dismissed with costs.

R.K.P.S.

Appeals dismissed.

JUDIS