

A
CALCUTTA DOCK LABOUR BOARD AND ANR.

v.

SMT. SANDHYA MITRA AND ORS.

B
February 11, 1985

[P.N. BHAGWATI AND RANGANATH MISRA, JJ.]

C
Liability to attachment in execution of a decree of the Court—Whether gratuity payable to a workman employed under the Calcutta Dock Labour Board is attachable for satisfaction of a decree of the Court—Payment of Gratuity Act 1972, sections 1(3), 2(n) 4, 5, 13 and 14 read with Rule 2 of the Gratuity Rules, 1972 and sections 6(g), 8 and 60 of the Code of Civil Procedure (Act III of 1908).

D
Md. Safur Rehman was a dock worker and gratuity was payable to him under one of the three prevailing schemes of the Calcutta Dock Labour Board. Respondent No. 1 filed a suit before the Court of Small Causes at Calcutta asking for recovery of a sum of money against the widow and son of the said Md. Safur Rehman after his death and prayed for attachment of the gratuity payable to the said workman. The Court made an order and called upon the Board to withhold payment of the amount, whereupon the Board pointed out to Court that gratuity was not liable to attachment. The Chief Judge of the Court of Small Causes examined the objection against attachment and overruled the same. In appeal by the appellants a Division Bench of the High Court examined the provisions under the Payment of Gratuity Act and the Code of Civil Procedure, and holding (a) clause (g) of section 6 of the Civil Procedure Code does not cover the gratuity payable by the Board to a registered dock worker since subsequent amendment of this clause have not been adopted and made applicable by the High Court to Presidency Small Causes Court; and (b) Rule 9 of the Gratuity Rules which purports to exempt gratuity from attachment, not having been made by the Central Government on powers delegated by the Parliament under the Dock Workers (Regulation of Employment) Act, but by the Board on sub-delegation of powers under the scheme cannot override the legal right of the plaintiff, and dismissed the appeal. Hence the appeal by special leave.

H
Allowing the appeal, the Court,

HELD : 1. The preamble of the Payment of Gratuity Act, 1972 clearly indicates the legislative intention that the Act sought to provide a scheme for payment of gratuity to all employees engaged in, *inter-alia* ports, and under this Act gratuity was payable to workers like Md. Safiur Rehman. In view of the provisions in section 1 (3) of the Act gratuity must be taken to be covered by section 4 of the Act, in the absence of any notification contemplated under section 5. Section 14 has also overriding effect and section 13 gives total immunity to gratuity from attachment. The gratuity which was payable to him squarely came within the purview of the Act and, therefore, became entitled to immunity under section 18 thereof.

[830D-E]

2. The immunity under section 13 of the Payment of Gratuity Act, itself being adequate the Court applied *non-liquet* on the two issues, namely, (a) consideration of the subsequent event of the amendment of section 13 of the Gratuity Act by Central Act 25 of 1984 with effect from July 1st, 1984; and (b) the necessity for remaking of the Calcutta High Court's earlier order under section 8 of the Civil Procedure Code extending the provisions of section 60 of the Code to the Small Causes Court consequent to section 97 of the Amending Act of 1976. [830H; 831A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 345 of 1985.

Appeal by Special leave from the Judgment and Order dated the 5th October, 1983 of the Calcutta High Court at Calcutta in Civil Order No. 971 of 1983.

D. N. Mukherjee for the Appellants.

Mahabir Singh for the Respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. Special leave granted.

The short question which falls for decision in this appeal is whether gratuity payable to a workman employed under the Calcutta Dock Labour Board (hereinafter referred to as 'Board') is attachable for satisfaction of a decree of the Court. Md. Safiur Rehman was a dock worker and gratuity was payable to him under one of the three prevailing schemes of the Board. Respondent 1 filed a suit before the Court of Small Causes at Calcutta asking for recovery of a sum of money against the widow and son of the said Md. Safiur Rehman after his death and prayed for attachment of the gratuity payable to the said workman. The Court made an order and called upon the

A Board to withhold payment of the amount whereupon the Board pointed out to the Court that gratuity was not liable to attachment. On receipt of such intimation, the Court, made an order requiring the Board to show cause as to why it may not be proceeded against for disobedience of the Court's direction. The Chief Judge of the Court of small Causes examined the objection against attachment and overruled the same. Against the rejection of the objection the appellants moved the High Court at Calcutta and contended that the gratuity payable to the workman was not liable to attachment. A Division Bench of the High Court examined the tenability of the contention and came to the following conclusion :

C "On a careful consideration of the legal position we, however, find that the learned Chief Judge is right in his conclusion. Plaintiff has a legal right to attach any debt payable to his debtor or legal representative. This right, however, is always subject to exceptions made by any statutory provision. Section 13 of the Payment of Gratuity Act no doubt bars attachment but that only is in respect of gratuity payable under that Act. The gratuity now under attachment is payable not under the Act. Section 60 of the Code of Civil Procedure as amended may bar attachment of gratuity as now under consideration. But that section as it now stands had not been made applicable to Presidency Small Causes Court. Under Section 8 of the Code, the High Court adopted certain provisions of the Code including section 60 as amended upto 1965 and made them applicable to Presidency Small Causes Court. Section 6, clause (g) so adopted reads as follows :

(g). Stipends and gratuities allowed to pensioners of the Government or payable out of any service, family pension fund notified in Official Gazette by the Central Government or the State Government in this behalf and political pensioners.

G This clause does not cover the gratuity payable by the Board to a registered dock worker and the subsequent amendment of this clause not having been adopted and made applicable by the High Court to Presidency Small Causes Court, the learned Chief Judge is right in his conclusion.

H

Next reliance is placed on Rule 9 of the Gratuity Rules which no doubt purports to exempt gratuity from attachment. But these rules not having been made by the Central Government on powers delegated by the Parliament under the Dock Workers (Regulation of Employment) Act, but by the Board on sub-delegation of powers under the scheme, the same in our view cannot override the legal right of the plaintiff."

Mr. Mukherjee appearing for the appellants maintained that the view taken both by the Chief Judge of the Small Causes Court as also the Division Bench of the High Court is contrary to law and, therefore, cannot be sustained. The respondents had filed an appearance through counsel but no one participated in the hearing.

Section 1 (3) of the Payment of Gratuity Act (39 of 1972) ('Act' for short), provides that the Act shall extend to ports. 'Port' has been defined in s. 2 (n) of the Act. There can be no dispute that the Calcutta Port is covered by the Indian Ports Act, 1908. It is true that under one of the three schemes framed by the Calcutta Dock Labour Board gratuity was payable to Md. Safiur Rehman, but such gratuity must be taken to be covered by s. 4 of the Act, in the absence of any notification contemplated under s. 5. Section 5 authorises the appropriate Government by notification and subject to such conditions as may be specified in that notification to exempt, *inter alia* any port to which the Act applies, from the operation of the provisions of the Act, if in the opinion of the appropriate Government the employees in the port are in receipt of gratuity or pensionary benefit not less favourable than the benefits conferred under the Act. Neither the Chief Judge nor the High Court has found that there has been a notification as contemplated under s. 5 of the Act in this case. It had also not been contended at any stage by the respondents that such a notification had been made.

Reference may now be made to ss. 13 and 14 of the Act which are very relevant.

"13. *Protection of gratuity*:—No gratuity payable under this Act shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court."

A 14. *Act to override other enactments, etc.*—The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.”

B We may point out that by Central Act No. 25 of 1984 s. 13 has been amended with effect from July 1, 1984, and the amended section reads thus :—

C “No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under section 5 shall be liable to attachment in execution of any decree or order of any civil, revenue, or criminal court.”

D In the absence of any notification within the meaning of s. 5 of the Act the amendment is not relevant for consideration. Section 14 has overriding effect and s. 13 gives total immunity to gratuity from attachment. The preamble of the Act clearly indicates the legislative intention that the Act sought to provide a scheme for payment of gratuity to all employees engaged in, *inter alia*, ports and under this Act gratuity was payable to workers like Md. Safiur Rehman. The gratuity which was payable to him squarely came within the purview of the Act and, therefore, become entitled to immunity under s. 13 thereof.

E

F In s. 60 of the Code of Civil Procedure provision for exemption from attachment has been made and a detailed list has been provided in sub-s. (1) thereof in clauses (a) to (p). Clause (g) thereof exempts stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer from attachment. It may be pointed out that the words “local authority” or “other employer” were inserted into the statute by the amending Act of 1976 with effect from February 1, 1977. The Chief Judge as also the High Court relying on the provisions of section 8 of Code took the view that unless extended by the High Court of Calcutta, the protection of s. 60 was not available in regard to proceedings before the Presidency Small Causes Court at Calcutta. It appears

G that the Calcutta High Court in exercise of power under s. 8 of

H

the Code had extended the provisions of the s. 60 of the Code but the High Court seems to have wrongly taken the view that the effect of s. 97 of the Amending Act of 1976 was that the notification of the High Court was no more effective unless re-made. It is wholly unnecessary for the disposal of this appeal to examine that aspect as in our view the immunity under s. 13 of the Act is adequate to accept the appeal and find against the respondent. We, therefore, allow the appeal and hold that the Chief Judge as also the High Court were in error in taking the view that gratuity payable to Md. Safiur Rehman was liable to attachment. Parties are directed to bear their own costs.

S. R.

Appeal allowed.