

AIR INDIA  
v.  
UNION OF INDIA AND OTHERS

JULY 18, 1995

[A.M. AHMADI, C.J. AND S.P. BHARUCHA, J.]

*Administrative Law:-*

*Repeal of an Act—Saving of Subordinate legislation made under the Repealed Act—Subordinate legislation made under the repealed Act would cease to be effective in the absence of a saving clause in the repealing Act.*

*Service Law:-*

*Air Corporation Act, 1953—S.45—Air India employees Service Regulations framed thereunder—Repeal of the Act of Air Corporation (Transfer of Undertakings and Repeal) Act, 1994—Regulations framed under the Repealed Act—Whether cease to exist—Held:Yes.*

The Appellant Air India was established under the Air Corporation Act, 1953 vide Section 45 of which the Air India Employees Service Regulations were framed. The Deputy Chief Labour Commissioner, Delhi certified the standing orders despite the Appellant's objection.

The Appellant challenged the Certification before the High Court but was not successful. Being aggrieved by the High Court's Judgment, the Appellant preferred the present Special Leave Petition.

On behalf of the Respondents it was contended that by reason of section 11 of the Air Corporation (Transfer of Undertaking and Repeal) Act, 1994, the Air Corporation Act, 1953 stood repealed; the regulations framed under Section 45 of the repealed Act, no longer survived and the appellant's bid to avert certification also disappeared.

On behalf of the appellant it was contended that the said Regulations were saved by Section 8 of the 1994 Act.

Dismissing the Special Leave Petition, this Court

**HELD :** 1. If subordinate legislation is to survive the repeal of its

**A** parent statute, the repealing statute must say so in so many words, and by mentioning the title of the subordinate legislation. [179-G]

**B** 2. Section 8 of the Air Corporation (Transfer of Undertakings and Repeal) Act, 1994 does not in express terms save the Air India Employees Service Regulations but only protects the remuneration, terms and conditions and rights and privileges of those who were in the appellant's employment when the 1994 Act came into force on 29th January, 1994. Thus, the said Regulations ceased to be effective from that date. [179-H, 180-B]

*Watson v. Winch*, [1916] 1 K.B. 668, relied on.

**C** *Bennion on Statutory Interpretation 2nd Edition P.P. 494-495*, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6392 of 1992.

**D** From the Judgment and Order dated 27.8.90 of the Delhi High Court in C.W. No. 637 of 1988.

**E** Altaf Ahmad, Additional Solicitor General, F.S. Nariman, Ms. Indira Jaising, Jitendra Sharma, Lalit Bhasin, Ms. Nina Gupta, Ms. Kiran, Mr. Niraj Sharma, Vineet Kumar, S. Sinha, M.N. Shroff, Ms. G. Dara, P. Gaur, C.V.S. Rao, R.P. Srivastava, Adish C. Aggarwal, S.N. Terdol and K.R. Nagaraja for the appearing parties.

The Judgment of the Court was delivered by

**F** **BHARUCHA, J.** Special leave granted.

The appeal impugns a judgment of the Delhi High Court. The appellant is Air India.

**G** Air India was established under the Air Corporations Act, 1953. Under the provisions of Section 45 thereof, the Air India Employees Service Regulations, 1963, were framed with the consent of the Central Government. The said Regulations governed the terms and conditions of service of Air India's employees, in or about the year 1982 the Deputy Chief Labour Commissioner, Delhi, initiated proceedings against Air India under the provisions of the Industrial Employment (Standing Orders)

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Act, 1946, for certification of Standing Orders. Air India contended that the Standing Orders Act did not apply to it. The contention was rejected and Standing Orders were certified. Air India's appeal was rejected. Air India then filed the writ petition upon which the order under appeal was passed. The High Court held that the Standing Orders Act was a special Act and applied to Air India's employees.

The Air Corporations (Transfer of Undertakings & Repeal) Act, 1994 came into force on 29th January 1994. By reason of Section 11 thereof the Air corporations Act, 1953, stands repealed from that day, Based upon this, Ms. Jaisinh, appearing for Air India's employees, has raised a contention that goes to the root. Air India's case had been that its employees' terms and conditions of service were governed by the said Regulations framed under Section 45 of the Air Corporations Act, 1953; that Act having now been repealed, the said Regulations no longer survived and the sheet-anchor of Air India's bid to avert certification of Standing Orders under the Standing Orders Act disappeared.

Mr. F.S. Nariman, learned counsel for Air India, submitted that the said Regulations were saved by Section 8 of the 1994 Act, which reads thus:

"8. Provisions in respect of officers and other employees of corporations - (1) Every officer or other employee of a corporation (except a Director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or a substantial part of the business and affairs of the corporation) serving in its employment immediately before the appointed day shall, in so far as such officer or other employee is employed in connection with the undertaking which has vested in a company by virtue of this Act, become, as from the appointed day, an officer or other employee, as the case may be, of the company in which the undertaking has vested and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, passage, insurance, superannuation scheme, provident fund, other funds, retirement, pension, gratuity and other benefits as he would have held under that corporation if its undertaking had not vested in the company and shall continue to do so as an officer or other employee, as the case may be, of the company

A or until the expiry of a period of six months from the appointed day if such officer or other employee opts not to be the officer or other employee of the company, within such period.

B (2) Where an officer or other employee of a corporation opts under sub-section (1) not to be in the employment or service of the company in which the undertaking of that corporation has vested, such officer or other employee shall be deemed to have resigned.

C (3) Notwithstanding anything contained in the industrial Disputes Act, 1947 (14 of 1947) or in any other law for the time being in force, the transfer of the services of any officer or other employee of a corporation to a company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

D (4) The officers and other employees who have retired before the appointed day from the service of a corporation and are entitled to any benefits, rights or privileges shall be entitled to receive the same benefits, rights or privileges from the company in which the undertaking of that corporation has vested.

E (5). The trusts of the Provident Fund or Pilots Group Insurance and Superannuation Scheme of the corporation and any other bodies created for the welfare of officers or employees would continue to discharge their functions in the company as was being done hitherto in the corporation. Tax exemption granted to Provident Fund or Pilots Group Insurance and Superannuation Scheme would continue to be applied to the company.

F (6) Notwithstanding anything contained in this Act or in the Companies Act, 1956 (1 of 1956) or in any other law for the time being in force or in the regulations of a corporation, no Director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or a substantial part of the business and affairs of that corporation shall be entitled to any compensation against that corporation or against the company, as the case may be, for the loss of office or for the premature termination of

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any contract of management entered into by him with that corporation. A

In *Watson v. Winch*, [1916] 1 K.B. 688, Lord Reading, C.J., said:

"It would follow that any by-law made under a repealed statute ceases to have any validity unless the repealing Act contains some provision preserving the validity of the by-law notwithstanding the repeal." B

Sankey, J., concurring, said:

"When a statute is repealed any by-law made thereunder ceases to be operative unless there is a saving clause in the new statute preserving the old by-law. There appear to be two reasons for this ..... Secondly, because the usual practice is to insert in the later statute a section *expressly preserving previously made by-law* if it is intended that they shall remain in force." C D

[Emphasis supplied].

Bennion on *Statutory Interpretation*, 2nd edition, at pages 494 and 495 states that a "saving is a provision the intention of which is to narrow the effect of the enactment to which it refers so as to preserve some existing legal rule or right from its operation". It adds, "Very often a saving is unnecessary, but is put in *ex abundantia cautela* to question doubts". The updated text of the Interpretation Act, 1978, (set out in Bennion's book at page 897) put into statutory form in Section 15 what is otherwise recognised in law, namely, that the repeal of an enactment does not, unless the contrary intention appears, affect any right or privilege accrued under that enactment. E F

In our view, if subordinate legislation is to survive the repeal of its parent statute, the repealing statute must say so in so many words any by mentioning the title of the subordinate legislation. We do not think that there is room for implying anything in this behalf. G

Section 8 of the 1994 Act does not in express terms save the said Regulations, nor does it mention them. Section 8 only protects the remuneration, terms and conditions and rights and privileges of those who were in Air India's employment when the 1994 Act came into force. Such H

A saving in undoubtedly "to quieten doubts" of those Air India employees who were then in service. What is enacted in Section 8 does not cover those employees who joined Air India's service after the 1994 Act came into force. The limited saving enacted in Section 8 does not, in our opinion, extend to the said Regulations.

B Holding as we do that the said Regulations ceased to be effective on 29th January, 1994, the very foundation of Air India's case no longer exists. No consideration of other arguments is, therefore, necessary.

The appeal, accordingly, fails and is dismissed with costs.

V.S.S.

Appeal dismissed.