

A ANDHRA BANK  
v.  
B. SATYANARAYANA AND ORS.

FEBRUARY 12, 2004

B [V.N. KHARE, CJ., S.B. SINHA AND S.H. KAPADIA, JJ.]

*Service Law:*

C *Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980; Ss.12(2) and 19/Andhra Bank (Officers) Service Regulations, 1982; Regulation 17(1):*

D *Promotion to the Post of Assistant General Manager in terms of procedure laid down in a Circular as per Regulation 17(1)—Circular—Challenge to—Single Judge of the High Court held the Regulation as arbitrary as without guidelines—On appeal, Division Bench of the High Court held the Regulation not ultra vires the Constitution of India, however, observed that the procedure laid down in Section 19 of the Act should have been followed while formulating the promotion policy—On appeal, held: Parliament has conferred essential legislative functions upon the Board of Directors/Bank to make regulations—E While formulating a promotional policy 'a corresponding new Bank' must follow directions of the Central Government in consultation with the Reserve Bank of India—Amendments, if proposed in the Regulations, has to be placed before both the Houses of Parliament—Hence the Regulation does not confer any unguided, uncanalised and arbitrary power on the Bank while laying down the promotion policy—However, procedure laid down therefore is F irrelevant for the purpose of formulating the promotion policy decision.*

*Words and Phrases:*

G *'corresponding new Bank'—Meaning of in the context of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.*

*Legal Maxims:*

*Maxim 'ut res magis valeat quam pereat'—Applicability of—Discussed.*

H Respondents were holding the posts of Regional manager and they

were considered for promotion to the post of Assistant General Manager by the appellant-Bank as per procedure laid down in the Circular issued in terms of Regulation 17(1) of the Andhra Pradesh (Officers) Service Regulations. Respondent Nos. 3 to 13 were promoted. Respondent Nos. 1 and 2; the aggrieved Officers, challenged the validity of the Circular. Single Judge of the High Court held Regulation 17 as arbitrary as *no guidelines* were provided. The Bank preferred an appeal, which was allowed by the Division Bench of the High Court holding that the Regulation was not *ultra vires* the Constitution of India; however, it noticed that the Bank did not comply with the provisions of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, while formulating the promotion policy. Hence the present appeal.

It was contended for the appellant that the promotion policy was formulated in terms of Regulation 17 of the Regulations and in conformity with the guidelines issued by the Government of India; and that it was not necessary to consult the Reserve Bank of India or obtain prior permission of the Central Government.

Allowing the appeal, the Court

HELD: 1.1. The appellant-Bank was a 'corresponding new bank' within the meaning of the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act. It has to be guided by such directions as regard the matters of policy involving public interest as the Central Government may give after consultation with the Governor of Reserve Bank. [308-E]

1.2. The Board of Directors of the corresponding new bank is empowered to make a regulation after consultation with the Reserve Bank of India and after obtaining previous sanction of the Central Government, pursuant to or in furtherance of sub-section (2) of Section 12 read with Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act. [309 B, C]

1.3. In terms of Regulation 17 of the Regulations, sufficient safeguards have been provided for therein in as much as while laying down the policy, the Board must have regard to the guidelines issued by the Central Government. It is further not in doubt or dispute that such guidelines had been provided by the Government in terms of the regulation. [309-F, G]

A 1.4. It is a well-settled principle of service jurisprudence that the employer is entitled to lay down policy decision laying down the criteria for grant of promotion to its officers. The eligibility norms for such promotions must be defined by the Bank on a realistic basis wherefor a system to choose the best available talent to man the critical positions is to be devised. Once a power vests in an authority by reason of the provisions of a statute, it is trite that such power can be exercised from time to time. Changes are required to be made keeping in view the requirement of the management as also the exigency of the situation obtaining at the relevant time. Furthermore, it is one thing to say that by reason of Section 19 of the Act the Parliament has conferred essential legislative functions upon the Board of Directors to make regulation but it is another thing to say that the regulation is arbitrary and *ultra vires* as it did not contain sufficient guidelines. The High Court did not come to the conclusion that essential legislative competence of the Parliament has been delegated to the Board of Directors in terms of Section 17 of the Act or otherwise. [309-H; 310-A, B, C]

D 1.5. For amending the regulations, each time Board of Directors were not only required to consult the Reserve Bank of India and obtain previous permission of the Central Government but also the amended regulations were required to be laid before both the Houses of the Parliament in terms of Section 19 of the Act. With a view to avoid the rigors of such procedural requirements, there existed no reason as to why the said power cannot be delegated to the Board of Directors keeping in view the fact that the policy decision required to be laid down for effecting promotions to different grades of officers and employees at different points of time. [310-D, E]

F 1.6. Regulation 17 of the Regulation does not confer any unguided, uncanalised and arbitrary power as the same was issued in conformity with the guidelines issued by the Central Government. The requirement to lay down the regulation before both Houses of Parliament also provides for sufficient safeguard. For making a regulation, the requirements of Section 19 of the Act were required to be complied with but the procedure laid down therefor are wholly irrelevant for the purpose of formulating the policy decision in terms of Regulation 17. The High Court in its impugned judgment failed to notice the said distinction and, thus, based its decision wholly on a wrong premise. A machinery provision, it is trite, must be construed in such a manner so as to make it workable having

regard to the doctrine '*ut res magis valeat quam pereat*'.

[310-F, G, H; 311-A]

*People's Union for Civil Liberties and Anr. v. Union of India and Ors., JT (2004) 1 SC 152, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1877 of 1999. B

From the Judgment and Order dated 31.3.1998 of the Andhra Pradesh High Court in W.A. No. 1152 of 1988.

V.R. Reddy, P.P. Singh, Sunil Murarka and Sakya Singha Chaudhuri C  
for the Appellant.

Manoj Wad (NP), Shrish Kumar Misra (NP) for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA , J. This appeal is directed against the judgment and order D  
dated 31.3.1998 passed by a Division Bench of the Andhra Pradesh High Court in Writ Appeal No.1152 of 1988 whereby and whereunder an appeal preferred by the appellant herein against a judgment and order dated 13.6.1988 passed by a learned Single Judge in Writ Petition No.6076 of 1984 was dismissed. E

In view of the point involved in this appeal, it may not be necessary to dwell at length the fact of the matter. Suffice it to point out that Respondent Nos. 3 to 12 herein at all relevant times were holding the posts of Regional Manager. They along with the Respondent Nos.1 and 2 herein were considered for promotion to the post of Assistant General Manager upon following the procedures laid down in a circular letter dated 11.2.1984 issued in terms of Regulation 17(1) of the Andhra Bank (Officers') Service Regulations, 1982, (hereinafter referred to as 'the Regulations', for the sake of brevity). Upon consideration of the cases of the private parties herein, the respondent Nos. 3 to 13 were promoted; whereafter the writ petition was filed by the respondent Nos. 1 and 2 herein questioning the validity of the said circular. A learned Single Judge of the High Court in the said writ petition held that Regulation 17(1) of the Regulation is arbitrary as no guideline was provided thereby. Aggrieved by and dissatisfied with the said judgment, the appellant herein preferred an appeal before the Division Bench of the High Court. The Division Bench despite holding that Regulation 17 of the Regulations may not be *ultra* H

A *vires* the Constitution of India but the promotion policy formulated by the appellant should have been issued in compliance of the procedure laid down in Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (hereinafter referred to as 'the Act', for the sake of brevity) holding :

B "...It is a settled principle of law when power is delegated to a subordinate law making body subject to certain conditions, the conditions must be complied with. Otherwise the subordinate legislation would be *ultra vires*, the power granted to it, which itself is subject to a condition."

C Mr. V.R. Reddy, learned Senior Counsel appearing on behalf of the appellant would submit that the Division Bench of the High Court went wrong in holding that in making the guidelines, the conditions precedent for making the regulation as contained in Section 19 of the Act were required to be complied with. The learned counsel would submit that it is not in dispute  
D that the Board of Directors of the appellant-Bank before framing the regulations had consulted the Reserve Bank of India and also obtained prior approval of the Central Government in terms of Section 19 of the Act. The policy decision as regard promotion of the officers having been framed in terms of Regulation 17 and in conformity with the guidelines issued by the Union of India, Mr. Reddy would submit, it was not necessary to consult the Reserve Bank of  
E India or obtain prior permission of the Central Government.

It is not in dispute that the appellant-Bank was a 'corresponding new bank' within the meaning of the provisions of the Act. Section 8 of the Act obligates every corresponding new bank to be guided by such directions as regard the matters of policy involving public interest as the Central Government  
F may, after consultation with the Governor of the Reserve Bank, give.

Sub-section (2) of Section 12 of the Act reads as under:

G "(2) Save as otherwise provided in sub-section (1), every officer or other employee of an existing bank shall become, on the commencement of this Act, an officer or other employee, as the case may be, of the corresponding new bank and shall hold his office or service in that bank on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if the undertaking of the existing bank had not  
H been transferred to and vested in the corresponding new bank and

continue to do so unless and until his employment in the corresponding new bank is terminated or until his remuneration, terms or conditions are duly altered by the corresponding new bank.”

The Board of Directors of the corresponding new bank is empowered to make a regulation after consultation with the Reserve Bank of India and previous sanction of the Central Government. Such regulation, *inter alia*, may relate to the duties and conduct of officers and other employees of the corresponding new bank.

It is not in dispute that pursuant to or in furtherance of sub-section (2) of Section 12 read with Section 19 of the Act, in consultation with the Reserve Bank of India and upon obtaining prior permission therefor, the Board of Directors of the appellant-Bank framed the Regulations known as ‘Andhra Bank (Officers’) Service Regulations 1982’. Regulation 17 of the said Regulations reads thus :

“17. Promotions :

1. Promotions to all Grades of officers in the Bank shall be made in accordance with the policy laid down by the Board, from time to time, having regard to the guidelines of the Government, if any.
2. For the avoidance of doubts, it is clarified that this regulation shall also apply to promotions of any category of employees to the Junior Management Grade.”

It appears that the Central Government had also issued guidelines purported to be in terms of Regulation 17 of the Regulations.

It was not the contention of the Respondent Nos.1 and 2 before the High Court or before us that the Board of Directors by reason of the regulation making power could not have been delegated with the power to lay down a policy for grant of promotion to the officers working in the bank. From a bare perusal of Regulation 17, it would be evident that sufficient safeguards have been provided for therein inasmuch as while laying down such policy, the Board must have regard to the guidelines issued by the Central Government. It is further not in doubt or dispute that such guidelines had been provided by the Government in terms of the aforementioned regulation.

A valid regulation once framed would be a part of the statute.

A It is a well-settled principle of service jurisprudence that the employer is entitled to lay down policy decision laying down the criteria for grant of promotion to its officers. The eligibility norms for such promotions must be defined by the bank on a realistic basis wherefor a system to choose the best available talent to man the critical positions is to be devised. Once a power vests in an authority by reason of the provisions of a statute, it is trite that such power can be exercised from time to time. Changes are required to be made keeping in view the requirement of the management as also the exigency of the situation obtaining at the relevant time. Furthermore, it is one thing to say that by reason of Section 19, the Parliament has conferred essential legislative functions upon the Board of Directors to make regulation but it is another thing to say that the regulation is arbitrary and *ultra vires* as it did not contain sufficient guidelines. The High Court did not come to the conclusion that essential legislative competence of the Parliament has been delegated to the Board of Directors in terms of Section 17 of the Act or otherwise.

D The regulations in terms of sub-section (2) of Section 12 read with Section 19 of the Act were required to be framed by the Board of Directors. For amending the regulations each time they were not only required to consult the Reserve Bank of India and obtain previous permission of the Central Government but also the amended regulations were required to be laid before both the Houses of the Parliament in terms of Section 19 of the Act. With a view to avoid the rigors of such procedural requirements, we see no reason as to why the said power cannot be delegated to the Board of Directors keeping in view of the fact that the policy decision required to be laid down for effecting promotions to different grades of officers and employees at different points of time.

F Regulation 17 of the Regulation, in our opinion, does not confer any unguided, uncanalised and arbitrary power as the same was issued in conformity with the guidelines issued by the Central Government. The requirement to lay down the regulation before both Houses of Parliament also provides for sufficient safeguard. For making a regulation, the requirements of Section 19 of the Act were required to be complied with but the procedure laid down therefor are wholly irrelevant for the purpose of formulating the policy decision in terms of Regulation 17 aforementioned. The High Court in its impugned judgment failed to notice the said distinction and, thus, based its decision wholly on a wrong premise.

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 so as to make it workable having regard to the doctrine '*ut res magis valeat quam pereat*'.

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 In *People's Union for Civil Liberties and Anr. v. Union of India and Ors.*, JT (2004) 1 SC 152, this Court while rejecting a similar contention as regard Section 18 of the Atomic Energy Act, 1962 held:

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 "The question as to whether a statute is *ultra vires* Constitution of India having conferred unguided, uncanalised or wide power cannot be determined in vacuum. It has to be considered having regard to the text and context of the State as also the character thereof. It deals with a sensitive subject.

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 Section 18 has been enacted for the purposes specified therein. It is well-settled that guidelines for enacting the said provision must be found out from the subject matter covering the field. For the said purpose even the preamble of the Act may be looked into.

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 The notification of discovery of uranium or thorium, control over mining operations, the disposal of uranium, power to obtain information are within the scope and ambit of the said Act. Section 13 provides for informations as regard, contracts. Section 14 postulates control over production and use of atomic energy. Restrictions as regard disclosure of information as contained in Section 18 are not vague or wide in nature. It specifies the areas where such disclosures are prohibited. The powers of the Central Government to make an order in terms thereof are, thus, limited.

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 It is not a case where as in *Hamdard Dawakhana and Anr. v. Union of India and Ors.*, AIR (1960) SC 554 or *Krishna Mohan (P) Ltd. v. Municipal Corporation of Delhi*, [2003] 7 SCC 151 the Central Government has been conferred with a wide uncanalised and unguided power. It is also not a case where the words employed in the provision provide for no criteria nor can it be said that no standard has been laid down by the Parliament therefor. It is furthermore not a case where principles on which the power of the Central Government are to be exercised have not been disclosed. By reason of the Act, essential legislative functions have also not been delegated.

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 We do not think that having regard to the purport and object of the said Act, the provisions of Section 18 have bestowed unguided

A and uncanalised powers on the Central Government. Sections 18 and 3 of the Atomic Energy Act had to be enacted by the Parliament as in wrong hands the information can pose a danger not only to the security of the State but to the public at large.”

B The High Court, therefore, committed a manifest error in passing the impugned judgment.

C For the reasons aforementioned, the impugned judgment of the High Court cannot be sustained. It is set aside accordingly. The Appeal is allowed. Since in view of the fact that nobody appeared for the respondents, there shall be no order as to costs.

S.K.S.

Appeal allowed.