PUNJAB NATIONAL BANK AND ORS. A

v.

MANJEET SINGH AND ANR.

SEPTEMBER 29, 2006

[S.B. SINHA AND DALVEER BHANDARI, JJ.] B

Industrial Disputes Act, 1947—Section 18(3)(d)—Reference of industrial dispute regarding payment of remuneration to deposit collectors of Daily Deposit Scheme—Award by tribunal—Notices to deposit collectors for recovery of amount paid—Challenged, for not giving opportunity of hearing— C *Held: In terms of section 18(3)(b), award binding on all the workmen—Union representing the workmen were impleaded as parties and since industrial dispute has wide implication, individual workman cannot be made parties to a reference—Thus, it cannot be said that award not binding since the workmen were not parties.* D

Administrative Law—Natural justice—Principles of—Compliance—Held: Its application is limited where factual position or legal implication arising thereunder is disputed—If only one conclusion is possible, writ would not be issued only for violation of the principle of natural justice—Constitution of India, 1950. E

Deposit collectors working in Daily Deposit Scheme of various banks raised an industrial dispute seeking same pay scale and other service conditions admissible to regular clerical employees of these banks. Dispute was referred to the Industrial Tribunal. Appellant bank, few nationalised banks and Indian Banks Association were parties to the said reference. Tribunal F **passed an award directing absorpting of deposit collectors to be absorbed as regular staff and awarding other reliefs. Indian Banks Association challenged the award. High Court dismissed the writ petition. Special leave petition was also dismissed. Notices were issued to the Deposit Collectors for recovery of the amounts paid to them. Workmen challenged the notices on the ground** G **that the appellant could not take unilateral decision without giving them an opportunity of hearing, appellant could not take unilateral decision. High Court allowed the writ petition holding that the principles of natural justice were required to be complied with before issuing the said notice. Hence, the present appeal.**

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A Allowing the appeal, the Court

HELD: 1.1. From a perusal of clause (d) of sub-section (3) of section 18 of the Industrial Disputes Act, 1947 it is evident that all workmen who are employed in the establishment or who subsequently become employed in that establishment, would also be bound by an award made by an industrial tribunal. B In an industrial dispute referred to by the Central Government which has an all-India implication, individual workman cannot be made parties to a reference. All the workmen are not expected to be heard. The Unions representing the workmen were impleaded as parties. They were heard. They filed appeals before this Court. The Management as also the workmen were C parties to the said award. As the award was made in presence of the Unions, the submissions of respondents that the award was not binding on them because they were not parties cannot be accepted. [831-G-H; 832-A-B]

1.2. The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The Court D will not insist on compliance of the principles of natural justice in view of the binding nature of the award. Its application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not be issued only because there was a violation of the principle of natural justice. [832-B-D]

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1.3. Appellant Bank had no other option but to implement the award. If it did not, its action could be held to be penal. Letter of syndicate Bank does not state that the principles of natural justice were required to be complied with. As on the date of issuance of the letter they had not received the F necessary guidelines, a temporary measure was proposed to be taken therefor. Therefore, the impugned judgment cannot be sustained and is set aside. [833-F-G]

M.C. Mehta v. *Union of India and Ors.*, [1999] 6 SCC 237; *Viveka Nand Sethi* v. *Chairman, J&K Bank Ltd. and Ors.*, [2005] 5 SCC 337 and *P.D. Agrawal* v. *State Bank of India and Ors.*, JT (2006) 5 SC 235, referred to.

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2. In view of the peculiar facts and circumstances of this case, the recoveries may not be made from respondents so as to avoid undue hardship to them. This order is being passed in exercise of jurisdiction under Article 142 of the Constitution of India. [833-H; 834-A]

H *Shyam Babu and Ors.* v. *Union of India and Ors.*, [1994] 2 SCC 521

and *Sahib Ram* v. *State of Haryana*, [1995] Supp 1 SCC 18, referred to. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4330 of 2006.

From the Judgment and final Order dated 12.5.2003 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 13524 of 2000.

B

Dhruv Mehta, Harshvardhan Jha, Jashraj Deora and Mannoj Mehta (for K.L. Mehta & Co.) for the Appellants.

Gopal Mahajan and A.P. Mohanty for the Respondents.

The Judgment of the Court was delivered by

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S.B. SINHA J. Leave granted.

Appellant herein is a nationalised Bank. Some scheduled banks initiated a scheme commonly known as Daily Deposit Scheme. There were, however, various nomenclatures given therefor, as for example, Mini Deposit Scheme, D Pygmy Deposit Scheme etc. The said schemes were introduced for mobilizing small savings from public. For the said purpose, services of deposit collectors were taken to canvass opening of accounts, to collect deposists from the account holders at their residence/business premises, and to deposit collections in the banks on a daily basis.

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New Bank of of India, which has since merged with Appellant, had such a scheme. Respondents herein were deposit collectors in Pygmy Deposit Scheme floated by the said Bank. Under the agreement, they were entitled to commission at the rate of 3.5% of the collections made by them. Those Pygmy deposit collectors working in New Bank of India since 1979 had been allowed to continue with Appellant No. 1 upon their amalgamation in 1993. The F system of paying commission at the rate of 3.5% of the amount collected by them continued.

An industrial dispute was raised by such deposit collectors of various banks pursuant whereto the Government of India by a notification on 3.10.1980 G referred the following dispute for adjudication before the Industrial Tribunal, Hyderabad:

> "Whether the demand of the Commission Agents or as the case may be Deposit Collectors employed in the Banks listed in Annexure that they are entitled to the pay scale and other service conditions admissible H

A to regular clerical employees of these banks is justified? If not to what relief the workers concerned entitled to and from which date?"

Appellant Bank along with some other nationalised Banks was also parties to the said reference. The Association of the Bankers, *viz.*, Indian Banks Association was also impleaded in the said reference. By an award B made on 22.12.1988, the Tribunal opined that the deposit collectors were workmen and as such the reference was maintainable.

In its award it was directed:

(i) Eligible deposit collectors, i.e., those who are less than 45 years C of age as on 3.10.1980, if otherwise eligible, would be considered for regular absorption after taking qualifying examination,

(ii) Those, other than (i) above, shall be given benefits as conferred by the Award, i.e.

a. Full back wage of Rs. 7507 linked to minimum deposit of Rs. D 75007 p.m.

b. Incentive remuneration @ 2% for deposit collected above Rs. 75007 p.m.

c. Conveyance allowance of Rs. 507 p.m. for deposit collected E less than Rs. 10,000/7 and Rs. 1007 p.m. for deposit collected over Rs. 10,0007 p.m.

d. Gratuity equal to 15 days commission for each year of service rendered.

A writ petition filed by the Indian Banks Association before the High F Court of Andhra Pradesh questioning the correctness of the said award was dismissed. A special leave petition was preferred by the said Association before this Court. The Appeal was also dismissed. The judgment of this Court is since reported in [2001] 3 SCC 36. This Court noticed that before the High Court it was conceded that the relief of being absorbed as regular staff of the G Bank in clerical cadre was not available to be granted whereupon the High Court had set aside, the directions of the Tribunal to absorb the deposit collectors as regular staff. Other directions, however, came to be upheld. Appeals were also filed by the Workmen before this Court

The contention of Respondents was noticed in the following terms:

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"Mr Sharma submitted that gratuity need not be only under the Payment of Gratuity Act. He submitted that the Tribunal had not said that it was awarding gratuity under the Gratuity Act. He submitted that the Tribunal has powers, dehors the Gratuity Act, to direct payment of gratuity. He submitted that the Tribunal always has power and jurisdiction to modify conditions of service and, in this case, it has been found by the Tribunal that there were no fixed pay scales, no bonus, no gratuity, no dearness allowance and, therefore, the Tribunal had given the direction, as set out hereinabove, as and by way of a package. He submitted that earlier commission was being paid at a rate of 3.5 per cent by most of the banks. He pointed out that now, over and above the sum of Rs. 7500, the commission had been reduced to 2 per cent. He submitted that to that extent Deposit Collectors were losing, but as this was part of the package as given by the Tribunal it was being accepted by the Deposit Collectors. He submitted that the directions given by the Tribunal were fair and just and absolutely right. He submitted that the order of the High Court was correct and this Court should not interfere."

This Court also noticed the submissions made on behalf of the Workmen that deposit collectors had been working for 20 to 25 years and that there was nothing wrong if they were either absorbed in the banks or given regular pay scales, allowances and other service conditions as applicable to other employees of the banks.

This Court dismissed the appeal preferred by Indian Banks Association stating:

"We also see no substance in the contention that these Schemes are unremunerative. The banks have introduced these Schemes because they want to encourage the common man to make small and regular deposits. As a result of such Schemes, the number of depositors have become much larger. We have no doubt that such Schemes are continued because the banks find them remunerative. The banks have large collections through such Schemes."

Notices were issued to the Mini Deposit Collectors for recovery of the amounts paid to them from the date of the judgment of the High Court, i.e., 1.4.2001 stating:

"The bank shall start paying you the remuneration in respect of your

A assignment as "Mini Deposit Collector" as per the said terms of the above Award as modified by Andhra Pradesh High Court with effect from 1.4.2001 pending calculation of arrears/ recoveries in respect of the prior period i.e. from 28.3.1997 to 31.3.2001. The payment/ intimation of the arrears/ recoveries after adjustment of the amount already paid in respect of the period prior to 1.4.2001 i.e. from 28.3.1997 to 31.3.2001 B will be made/ given to you shortly."

Legality of the said notices came to be questioned by the Workmen in a writ petition filed before the Punjab and Haryana High Court *inter alia* on the premise that no unilateral decision could have been taken by Appellant C without giving an opportunity of being heard to them. Attention of the High Court was also drawn to an inter-departmental correspondence dated 26.5.2001 issued by the Syndicate Bank which is to the following effect:

"Attention of the branches is invited to our Circular Nos. DZO/P&D/ Cir.34/F.739/2001 dated 19.04.2001 and Circular No. DZO/P&D/Cir.39/ D 2001 dated 08.05.2001 wherein we have communicated the guidelines received from H.O. with regard to payment of remuneration to the Pigmy Agents in the light of the Supreme Court Judgment.

Now we have been informed by Head Office that they have been in touch with the IBA regarding further course of action contemplated E by them. On hearing from them, the necessary guidelines will be informed. Till such time, the procedure followed hitherto for payment of commission will continue.

Branches are advised to act accordingly and inform the agents."

F The High Court allowed the said writ petition on the premise that principles of natural justice were required to be complied with before issuing the said notice.

Mr. Dhruv Mehta, learned counsel appearing on behalf of Appellant would submit that the award being binding on all the workmen in terms of G Section 18(3)(d) of the Industrial Disputes Act, direction by the High Court to comply with the principles of natural justice was wholly unwarranted. It was further submitted that in a case of recovery of the amount in terms of an award, the writ court could not have exercised its discretionary jurisdiction.

Mr. Gopal Mahajan, learned counsel appearing on behalf of Respondents, H on the other hand, would submit that that the writ petitioners being not

parties to the said award, the award was not binding upon them. Had an opportunity been given to them, they could have shown that Appellant cannot take a different stand *vis-a-vis* other nationalized banks.

The Industrial Disputes Act, 1947 was enacted *inter alia* for settlement of industrial disputes and for certain other purposes. Maintenance of industrial peace by way of settlement of disputes is one of the objects of the said legislation. Section 18 of the Industrial Disputes Act specifies the persons on whom settlements and awards are binding. Sub-section (3) of Section 18 thereof provides as under:

> "(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where a notification has been issued under sub-section (3A) of section 10A or an award of a Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on -
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> (a) all parties to the industrial dispute;
>
> (b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause;
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> (c) where a party referred to in clause (a) or clause (b) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates;
>
> (d) where a party referred to in clause (a) or clause (b) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

From a perusal of clause (d) of sub-section (3) of Section 18 of the Industrial Disputes Act, it is, thus, evident that all workmen who are employed in the establishment or who subsequently become employed in that establishment would also be bound by an award made by an industrial tribunal. The management as also the workmen were parties to the said award. Hence, Respondents cannot be heard to say that the award was not binding on them only because they were not parties.

A In an industrial dispute referred to by the Central Government which has an all-India implication, individual workman cannot be made parties to a reference. All of them are not expected to be heard. The Unions representing them were impleaded as parties. They were heard. Not only the said Unions were heard before the High Court, as noticed hereinbefore from a part of the judgment of the High Court, they had preferred appeals before this Court, B Their contentions had been noticed by this Court. As the award was made in presence of the Unions, in our opinion, the contention of Respondents that the award was not binding on them cannot be accepted. The principles of natural justice were also not required to be complied with as the same would have been an empty formality. The court will not insist on compliance of the C principles of natural justice in view of the binding nature of the award.Their application would be limited to a situation where the factual position or legal implication arising thereunder is disputed and not where it is not in dispute or cannot be disputed. If only one conclusion is possible, a writ would not issue only because there was a violation of the principles of natural justice.

D In *M.C. Mehta* v. *Union of India and Ors.*, [1999] 6 SCC 237, the law is stated in the following terms:

> "... More recently Lord Bingham has deprecated the "useless formality" theory in *R.* v. *Chief Constable of the Thames Valley Police* Forces, *ex p Cotton* by giving six reasons. (See also his article "Should Public E Law Remedies be Discretionary?" 1991 PL, p. 64.) A detailed and emphatic criticism of the "useless formality theory" has been made much earlier in "Natural Justice, Substance or Shadow" by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63) contending that *Malloch* and *Glynn* were wrongly decided. Foulkes (*Administrative Law,* 8th Edn., F 1996, p. 323), Craig (Administrative Law, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. *de Smith* (5th Edn., 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. *Wade* (*Administrative Law*, 5th Edn., 1994, pp. 526-30) says that while futile writs may not G be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can H prove a "real likelihood" of success or if he is entitled to relief even

if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their "discretion", refuse certiorari, prohibition, *mandamus* or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in *State Bank of Patiala* v. *S.K. Sharma*, *Rajendra Singh* v. *State of M.P.* that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived." A B C

In *Viveka Nand Sethi* v. *Chairman, J&K Bank Ltd and Ors.*, [2005] 5 SCC 337, the law is stated in the following terms:

"The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See *Gurjeewan Garewal (Dr.)* v. *Dr. Sumitra Dash.*] The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. (See *State of Punjab* v. *Jagir Singh and Karnataka SRTC* v. *S.G. Kotturappa.*)" D E

[See also *P.D. Agrawal* v. *State Bank of India and Ors.*, JT (2006) 5 SC 235]

Appellant Bank had no other option but to implement the award. If it did not, its action could be held to be penal. Reliance placed by Respondents on the letter of the Syndicate Bank dated 26.5.2001 is also misplaced. The said circular letter does not state that the principles of natural justice were required to be complied with. As on the date of issuance of the circular letter they had not received the necessary guidelines, a temporary measure was proposed to be taken therefor. F G

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly.

However, keeping in view the peculiar facts and circumstances of this H

A case, we direct that the recoveries may not be made from Respondents so as to avoid undue hardship to them. This order is being passed in exercise of our jurisdiction under Article 142 of the Constitution of India.

Orders to the aforementioned effect have been passed in many cases, e.g. *Shyam Babu Verma and Ors.* v. *Union of India and Ors.*, [1994] 2 SCC
B 521 and *Sahib Ram* v. *State of Haryana and Ors.*, [1995] Supp. 1 SCC 18.

However, this part of the order shall not be treated as a precedent. The appeal is allowed with the aforementioned directions and observations. No costs.

C N.J. Appeal allowed.