

BIHAR STATE ELECTRICITY BOARD & ANR.

v.

RAM DEO PRASAD SINGH & ORS.

(Civil Appeal No. 7754 of 2011)

SEPTEMBER 08, 2011

[AFTAB ALAM AND R.M. LODHA, JJ.]

Bihar Reorganisation Act, 2000 – s. 89 – Transfer of pending proceedings – Respondent working at Thermal Power Station, Hazaribagh dismissed from service – Suit filed by respondent after four years before Munsif, Patna seeking declaration that dismissal was bad and inoperative in law – Suit allowed by the trial court – First appellate court by judgment dated 18.1.2006 upheld the said order – Patna High Court also upheld the order – On appeal, held: Suit filed by the respondent was not maintainable – On bifurcation of State of Bihar with effect from 15.11.2000, the appointed date under the Reorganisation Act, Thermal Power Station Hazaribagh which was earlier part of State of Bihar, forms part of the newly created State of Jharkhand – Transfer of proceedings in terms of s. 89 was to take place by operation of law – First appellate court as also the Patna High Court had no jurisdiction to hear and decide the matters – Patna High Court lost sight of fact that it was affirming a decree that was no longer executable in the State of Bihar – Jharkhand State Electricity Board came into existence on April 1, 2001 – Thereafter, Bihar State Electricity Board could not reinstate the respondents as security guards at Thermal Power Station, Hazaribagh where they were working at the time of dismissal – Respondent working as security guard at the Thermal Power Station, Hazaribagh were workmen under the Industrial Disputes Act – They could raise industrial disputes concerning their dismissal from service – Thus, the judgment passed by first appellate court as also Patna High Court was illegal and without jurisdiction – Judgment and decree under challenge

A *are set aside and suit is dismissed – Industrial Disputes Act, 1947.*

B In the year 1975, respondents working as security guards at Patratu Thermal Power Station, Hazaribagh, were dismissed from service, on charges of misconduct. After four years, the respondents filed a suit in the court of Munsiff, Patna, seeking declarations that their dismissal was bad, unconstitutional and inoperative in law and they would be legally deemed to have continued in service. The trial court allowed the suit. The appellants filed an appeal and the Additional District Judge dismissed the same by order dated 18.01.2006. The High Court also dismissed the second appeal. Therefore, the appellants filed the instant appeal.

D Allowing the appeal, the Court

E HELD: 1.1 The district of Hazaribagh, where Patratu Thermal Power Station is situated, was earlier part of the State of Bihar but on bifurcation of the State with effect from November 15, 2000, the appointed date under the Reorganisation Act it forms part of the newly created State-Jharkhand. From a bare reading of Section 89 of the Bihar Reorganisation Act, 2000, it is evident that on the appointed date the appeal preferred against the judgment and decree passed by the Munsiff stood transferred to a corresponding court in the State of Jharkhand. The transfer of the appeal took place by operation of law and the Additional District Judge, Patna was denuded of all authority and jurisdiction to proceed with the matter or to hear and decide the appeal. It follows equally that the Patna High Court had no jurisdiction to hear and decide the second appeal arising from the suit. Thus, in view of section 89 of the judgments of the High Court and the first appellate court appear to be manifestly illegal and without jurisdiction. [Para 4] [254-A-B; 255-C-E]

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BIHAR STATE ELECTRICITY BOARD & ANR. v. RAM 251
DEO PRASAD SINGH & ORS.

1.2 The judgment passed by the first appellate court was illegal and without jurisdiction and the judgment and order passed by the Patna High Court is equally without jurisdiction. It is quite strange the High Court lost sight of the fact that it was affirming a decree that was no longer executable or enforceable in the State of Bihar. Section 62 of the Re-organisation Act contains provisions relating to Bihar State Electricity Board besides two other Corporations. In terms of sub-section 3 of section 62, Jharkhand State Electricity Board came into existence on April 1, 2001. After that date it is no longer possible for the Bihar State Electricity Board to reinstate the respondents as security guards at Patratu Thermal Power Station where they were working at the time of dismissal from service. Thus, the judgments passed by the first appellate court and the High Court are untenable in law and the decree passed by the trial court, in the absence of Jharkhand State Electricity Board having been impleaded as a defendant, is rendered non-executable in the State of Bihar. [Paras 9, 10 and 11] [257-G-H; 258-H; 260-A-B]

1.3 The submission that the case may be transferred to an appropriate court in the State of Jharkhand from the stage of the first appeal against the judgment and decree passed by the Munsiff, Patna, and before that court the respondents might take steps for impleadment of the Jharkhand State Electricity Board as one of the defendants cannot be accepted. [Para 12] [260-C-D]

1.4 The respondents were dismissed from service on November 11, 1975. They filed the suit four years later at Patna and tried to overcome the bar of limitation by pleading that they first came to know about their dismissal from service when they went to collect their wages in October, 1976. The Munsiff strangely accepted the plea. [Para 14] [260-E-F]

A 1.5 Before filing the suit at Patna, the respondents
 had filed suits being title suit Nos. 65, 66, 67 and 72 of
 1975 before the Munsiff, Hazaribagh. Those suits were
 dismissed for default. Before the Patna court an objection
 was raised on behalf of the defendants-appellants
 B regarding the maintainability of the suit in terms of Order
 9 Rule 4 of the Code of Civil Procedure. The plaints of the
 suits filed at Hazaribagh were produced before the Patna
 court but the objection was overruled on the ground that
 the Board omitted to get the plaintiffs' signatures on the
 C plaints and vakalatnamas filed before the Hazaribagh
 court formally proved. [Para 15] [260-G-H; 261-A]

1.6 The suit filed by the plaintiffs was itself not
 maintainable. The respondents worked as security
 guards at the Thermal Power Station, they were,
 D therefore, workmen within the meaning of the Industrial
 Disputes Act, 1947 and their service conditions were
 governed by the standing orders framed under the
 Industrial Establishment (Standing Orders) Act, 1946 and
 the relevant rules framed by the Board. Therefore, it was
 E open to the respondents to raise an industrial dispute
 concerning their dismissal from service. [Para 16] [261-
 B-C]

The Premier Automobiles Ltd. v. Kamlekar Shantaram
Wadke of Bombay and Ors. (1976) 1 SCC 496: 1976 (1) SCR
 F 427 – referred to.

1.7 The respondents' suit was itself not maintainable.
 The judgments and decree coming under challenge are
 set aside and the suit filed by the respondents is
 G dismissed. [Paras 17 and 18] [262-E-F]

Case Law Reference:

1976 (1) SCR 427 Referred to Para 16

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
 H 7754 of 2011.

BIHAR STATE ELECTRICITY BOARD & ANR. v. RAM 253
DEO PRASAD SINGH & ORS.

From the Judgment and Order dated 22.09.2008 of the High Court of Patna in SA No. 97 of 2006. A

Navin Prakash for the Appellants.

S.B. Sanyal, Subhro Sanyal, Gopal Prasad, Rajiv Shankar
Dvivedi and Praveen Kr. Singh for the Respondents. B

The Judgment of the Court of was delivered by

AFTAB ALAM, J. 1. Leave granted.

2. The appellants, Bihar State Electricity Board and its Chairman were the defendants in a suit filed by respondents 1 to 8, the plaintiffs. The respondents were the workmen of the Board and at the material time, i.e., in the year 1974 they were working as security guards at Patratu Thermal Power Station, Hazaribagh. They were proceeded against on certain charges of misconduct. In the domestic enquiry the charges were established and on the basis of the findings of the domestic enquiry, they were dismissed from service on November 11, 1975. After 4 years of dismissal from service they filed a suit (T.S. No. 95/1979) in the court of Munsiff V, Patna, seeking declarations that their dismissal was bad, unconstitutional and inoperative in law and they would be legally deemed to have continued in service. C
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3. The trial court allowed the suit by judgment and decree dated August 29, 1981. The appeal preferred by the appellants against the judgment and decree passed by the trial court (Title Appeal No. 147 of 1981/62/2004) was dismissed by the Additional District Judge, fast track court No. 2, Patna, by judgment dated January 18, 2006. The appellants, then, brought the matter before the High Court in second appeal (SA No. 97 of 2006) but this too was dismissed by judgment and order dated September 22, 2008. The appellants are now before this Court assailing the judgments and decree passed against them. F
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A 4. In view of section 89 of the Bihar Reorganisation Act, 2000 the judgments of the High Court and the first appellate court appear to be manifestly illegal and without jurisdiction. It may be noted that the district of Hazaribagh, where Patratu Thermal Power Station is situated, was earlier part of the State of Bihar but on bifurcation of the State with effect from November 15, 2000, the appointed date under the Reorganisation Act it forms part of the newly created State-Jharkhand. Section 89 of the Reorganisation Act dealing with transfer of pending proceedings provides as follows –

C “89. “Transfer of pending proceedings –

D (1) Every proceeding pending immediately before the appointed day before the court (other than the High Court), tribunal, authority or officer in any area which on that day falls within the State of Bihar shall, if it is a proceeding relating exclusively to the territory, which as from that day is the territory of Jharkhand State, stand transferred to the corresponding court, tribunal, authority or officer of that State.

E (2) If any question arises as to whether any proceeding should stand transferred under sub-section (1), it shall be referred to the High Court at Patna and the decision of that High Court shall be final.

F (3) In this section, –

(a) “proceeding” includes any suit, case or appeal; and

G (b) “corresponding court, tribunal authority or officer” in the State of Jharkhand means, –

H (i) the court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day; or

BIHAR STATE ELECTRICITY BOARD & ANR. v. RAM 255
DEO PRASAD SINGH & ORS. [AFTAB ALAM, J.]

(ii) in case of doubt, such court, tribunal, authority, or officer in that State, as may be determined after the appointed day by the Government of that State or the Central Government, as the case may be, or before the appointed day by the Government of the existing State of Bihar to be the corresponding court, tribunal, authority or officer.”

(emphasis added)

From a bare reading of section 89 of the Act, it is evident that on the appointed date the appeal preferred against the judgment and decree passed by the Munsiff stood transferred to a corresponding court in the State of Jharkhand. The transfer of the appeal took place by operation of law and the Additional District Judge, Patna was denuded of all authority and jurisdiction to proceed with the matter or to hear and decide the appeal. It follows equally that the Patna High Court had no jurisdiction to hear and decide the second appeal arising from the suit.

5. From the judgment of the Patna High Court it appears that one of the three substantial questions of law arising in the second appeal related to the question of jurisdiction of the first appellate court to hear the appeal and the question was framed as follows: –

“3. Whether the lower appellate court had the jurisdiction to hear the title appeal after coming into force of the Bihar Re-organisation Act, 2000?”

6. The High Court answered the question in the negative, but in doing so it sought to side-step section 89 of the Re-organisation Act in curious ways. In paragraphs 9 and 10 of the judgment it held and observed as follows: –

“9. It is not in dispute that when the title suit was filed the

A said Act had not come into force and even when the title
 appeal was filed in the year 1981 the said Act was not in
 force and the said Act came into force in the year 2000
 and it was made effective from 15.11.2000 much after the
 title appeal had been admitted and was pending for
 B hearing. Furthermore, there was an issue before the trial
 court with respect to the jurisdiction of the court to try the
 suit as objection was raised by the defendants that the suit
 should have been filed at Hazaribagh and the said issue
 was framed as issue no. (iv) but the same was not pressed
 C by the defendants before the trial court and hence it
 appears to have been conceded by them that the court at
 Patna had jurisdiction to try the suit.

10. Section 89 of the Act specifically provides that a suit
 or an appeal pending in the territory of reorganised State
 D of Bihar would stand transferred to the State of Jharkhand
 if the subject matter of the suit falls within the State of
 Jharkhand. But it is also provided that if any question
 arises as to whether it shall be referred to Patna High
 Court and decision of that High Court shall be final.
 E However, in the instant case it is quite apparent that the
 title appeal remained pending for about four years after
 coming into force of the aforesaid Act but the defendants
 who were the appellants in that Court never raised any such
 question with regard to the jurisdiction of the Court nor any
 F such matter was ever referred to the High Court at Patna
 as per the said provisions of Law. Hence, in these
 circumstances the learned court of appeal below was quite
 justified in hearing the said title appeal and deciding it on
 merits."

G 7. The High Court is wrong on all scores. The fact that the
 appeal against the judgment and decree passed by the Munsiff
 was filed before the bifurcation of the State and on the
 appointed date (November 15, 2000) the appeal was already
 pending before the Additional District Judge has no bearing
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BIHAR STATE ELECTRICITY BOARD & ANR. v. RAM 257
DEO PRASAD SINGH & ORS. [AFTAB ALAM, J.]

on the issue. Section 89 relates to proceedings pending on the appointed date and not to proceeding that might be filed after that date. Secondly, the objection in regard to the territorial jurisdiction, raised before the trial court was in an altogether different context. The objection before the trial court was based on the ground that the plaintiffs-workmen were working at Patratu Thermal Power Station and their dismissal had taken place there. The cause of action having arisen at Patratu, the suit ought to have been filed before a court under whose territorial jurisdiction Patratu Thermal Power Station is situate. The objection was not pressed before the trial court presumably because the head office of the Board being at Patna it was believed that the plaintiffs could file the suit at Patna as well. But the objection taken before the Munsiff, whether pressed or given up, could have no bearing on the transfer of the proceedings on the bifurcation of the State in terms of section 89 of the Reorganisation Act.

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8. The third ground given by the High Court that the defendants who were the appellants before the Additional District Judge never raised the question with regard to the jurisdiction of the court nor any such question was referred to the Patna High Court for its decision, is equally misconceived and untenable. As noted above, the transfer of the proceedings in terms of section 89 of the Act is to take place by operation of law and is not dependant upon any objection raised by any of the two sides.

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9. In light of the above, it must be held that the judgment passed by the first appellate court was illegal and without jurisdiction and equally without jurisdiction is the judgment and order passed by the Patna High Court.

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10. Further, quite strangely the High Court lost sight of the fact that it was affirming a decree that was no longer executable or enforceable in the State of Bihar. Section 62 of the Reorganisation Act contains provisions relating to Bihar State Electricity Board besides two other Corporations and in so far

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A as relevant for the present provides as under: –

“62. Provisions as to Bihar State Electricity Board, State Warehousing Corporation and State Road Transport Corporation.-

B (1) The following bodies corporate constituted for the existing State of Bihar, namely:-

(a) the State Electricity Board constituted under the Electricity Supply Act, 1948 (54 of 1948);

C (b) the State Warehousing Corporation established under the Warehousing Corporations Act, 1962 (58 of 1962);

D (c) the State Road Transport Corporation established under the Road Transport Act, 1950 (64 of 1950),

E shall, on and from the appointed day, continue to function in those areas in respect of which they were functioning immediately before that day, subject to the provisions of this section and to such directions as may, from time to time, be issued by the Central Government.

F (2) Any directions issued by the Central Government under sub-section (1) in respect of the Board or the Corporation shall include a direction that the Act under which the Board or the Corporation was constituted shall, in its application to that Board or Corporation, have effect subject to such exceptions and modifications as the Central Government thinks fit.

G (3) The Board or the Corporation referred to in sub-section (1) shall cease to function as from, and shall be deemed to be dissolved on such date as the Central Government may, by order, appoint; and

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BIHAR STATE ELECTRICITY BOARD & ANR. v. RAM 259
DEO PRASAD SINGH & ORS. [AFTAB ALAM, J.]

upon such dissolution, its assets, rights and liabilities shall be apportioned between the successor States of Bihar and Jharkhand in such manner as may be agreed upon between them within one year of the dissolution of the Board or the Corporation, as the case may be, or if no agreement is reached, in such manner as the Central Government may, by order, determine: A B

Provided that any liabilities of the said Board relating to the unpaid dues of the coal supplied to the Board by any public sector coal company shall be provisionally apportioned between the State Electricity Boards constituted respectively in the successor States of the existing State of Bihar or after the date appointed for the dissolution of the Board under this sub-section in such manner as may be agreed upon between the Governments of the successor States within one month of such dissolution or if no agreement is reached, in such manner as the Central Government may, by order, determine subject to reconciliation and finalisation of the liabilities which shall be completed within three months from the date of such dissolution by the mutual agreement between the successor States or failing such agreement by the direction of the Central Government: C D E

Provided further that an interest at the rate of two per cent higher than the Cash Credit interest shall be paid on outstanding unpaid dues of the coal supplied to the Board by the public sector coal company till the liquidation of such dues by the concerned State Electricity Board constituted in the successor States on or after the date appointed for the dissolution of the Board under this sub-section. F G

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In terms of sub-section 3 of section 62, Jharkhand State Electricity Board came into existence on April 1, 2001. After H

A that date it is no longer possible for the Bihar State Electricity Board to reinstate the respondents as security guards at Patratu Thermal Power Station where they were working at the time of dismissal from service.

B 11. Thus, looked at from any angle, the judgments passed by the first appellate court and the High Court are untenable in law and the decree passed by the trial court, in the absence of Jharkhand State Electricity Board having been impleaded as a defendant, is rendered non-executable in the State of Bihar.

C 12. Mr. S.B. Sanyal, learned senior advocate, appearing for the plaintiffs-respondents, submitted that the case may be transferred to an appropriate court in the State of Jharkhand from the stage of the first appeal against the judgment and decree passed by the Munsiff, Patna. And before that court the
D plaintiffs-respondents might take steps for impleadment of the Jharkhand State Electricity Board as one of the defendants.

13. We are completely disinclined to take that course for the following reasons.

E 14. It may be recalled that the respondents were dismissed from service on November 11, 1975. They filed the suit four years later at Patna and tried to overcome the bar of limitation by pleading that they first came to know about their dismissal from service when they went to collect their wages in October,
F 1976. The Munsiff strangely accepted the plea.

15. Secondly, before filing the suit at Patna, they had filed suits being title suit Nos. 65, 66, 67 and 72 of 1975 before the Munsiff, Hazaribagh. Those suits were dismissed for default.
G Before the Patna court an objection was raised on behalf of the defendants-appellants regarding the maintainability of the suit in terms of Order 9 Rule 4 of the Code of Civil Procedure. The plaints of the suits filed at Hazaribagh were produced before the Patna court but the objection was overruled on the
H ground that the Board omitted to get the plaintiffs' signatures

BIHAR STATE ELECTRICITY BOARD & ANR. v. RAM 261
DEO PRASAD SINGH & ORS. [AFTAB ALAM, J.]

on the plaints and vakalatnamas filed before the Hazaribagh court formally proved. A

16. Thirdly and most importantly the suit filed by the plaintiffs was itself not maintainable. It may be recalled that plaintiffs worked as security guards at the Thermal Power Station, they were, therefore, without doubt workmen within the meaning of the Industrial Disputes Act, 1947 and their service conditions were governed by the standing orders framed under the Industrial Establishment (Standing Orders) Act, 1946 and the relevant rules framed by the Board. It was, therefore, open to the respondents to raise an industrial dispute concerning their dismissal from service. A suit seeking reinstatement was therefore clearly barred and not maintainable. The issue stands settled by the decision of this Court in *The Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke of Bombay and Others*, (1976) 1 SCC 496. In paragraphs 23 and 24 of the judgment this Court held as follows: – B
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“23. To sum up, the principles applicable to the jurisdiction of the Civil Court in relation to an industrial dispute may be stated thus: E

(i) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Act the remedy lies only in the civil court.

(ii) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Act, the jurisdiction of the civil court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy. F
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(iii) If the industrial dispute relates to the enforcement of a right or an obligation created under the Act, then the only remedy available to the suitor is to get an adjudication under the Act. H

A (iv) If the right which is sought to be enforced is a right created under the Act such as Chapter V-A then the remedy for its enforcement is either Section 33-C or the raising of an industrial dispute, as the case may be.

B 24. We may, however, in relation to principle No. 2 stated above hasten to add that there will hardly be a dispute which will be an industrial dispute within the meaning of Section 2(k) of the Act and yet will be one arising out of a right or liability under the general or common law only and not under the Act. Such a contingency, for example, may
C arise in regard to the dismissal of an unsponsored workman which in view of the provision of law contained in Section 2A of the Act will be an industrial dispute even though it may otherwise be an individual dispute. Civil
D Courts, therefore, will have hardly an occasion to deal with the type of cases falling under principle No. 2. Cases of industrial disputes by and large, almost invariably, are bound to be covered by principle No. 3 stated above."

E 17. We, thus, come to the inescapable conclusion that the plaintiffs-respondents' suit was itself not maintainable and was liable to be dismissed.

F 18. For the reasons discussed above the appeal is allowed. The judgments and decree coming under challenge are set aside and the suit filed by the plaintiffs-respondents is dismissed.

19. In the facts of the case there will be no order as to costs.

G N.J.

Appeal allowed.