

Commander Uday Date and ors. Vs. Union of India (Uoi) and anr.

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Court : Mumbai

Decided On : Dec-05-1996

Reported in : 1997(3)ALLMR620; 1997(4)BomCR10

Judge : A.P. Shah, J.

Acts : [Merchant Shipping Act, 1958](#) - Sections 76 and 80(1), ;[Constitution of India](#) - Article 226; [General Clauses Act, 1897](#) - Sections 6

Appeal No. : Writ Petition Nos. 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 139

Appellant : Commander Uday Date and ors.

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : S.M. Shah and S.V. Bharucha, Advs.

Advocate for Pet/Ap. : Dhananjay Chandrachud and ;Shyam Mehta, Advs., i/b., ;Satendra Kumar, Adv.

Disposition : Petition allowed

Judgement :

A.P. Shah, J.

1. Whether naval officers who have attained the rank of lieutenant in the executive branch of the Indian Navy are entitled to a certificate of service as the master of a foreign going ship without examination under section 80(1) of the [Merchant Shipping Act, 1958](#) (Act for short) after repeal of the said section on 14th August, 1986, is the short but interesting question which falls for my consideration in this group of writ petitions under Article 226 of the Constitution.

2. The facts are simple and very shortly stated. The petitioners are naval officers serving in the executive branch of the Indian Navy. The petitioners have attained the rank of lieutenant in the executive branch of the Indian Navy long prior to repeal of section 80(1), which provided for grant of a certificate of service as the master of a foreign going ship without appearing for the examination if the concerned officer has attained the rank of lieutenant in the executive branch of the Indian Navy. It may not be out of place to take note of the fact that some of the petitioners have been further promoted as Lt. Commander in Indian Navy and atleast in one case the officer has even reached the rank of commander. According to the petitioners they are all experienced Naval officers and have on several occasions commandeered foreign going ships. Their contention is that they are entitled to a certificate as master of the ship without examination under section 80 of the Act as it stood prior to its repeal since they had acquired the rank of lieutenant prior to the repeal of the section.

3. With a view to appreciate the case of the petitioners, it will be necessary to refer to the relevant provisions of the Act. Chapter VI of the Act deals with grant of certificates to officers like masters, mates, engineers, skippers etc. Section 76 provides that every Indian ship, other than a Home-trade ship of less than 200 tonnes gross engaged in coasting trade of India, when going to or from any port or place, shall be provided with officers duty certificate under the Act according to the scales laid down in that section. Section 78 then lays down different grades of certificates of competency and section 79 deals with examinations for and grant of certificates. Section 80 with which we are mainly concerned deals with certificates of naval officers and reads as follows :

'80.(1) A person who has attained the rank of lieutenant in the executive branch of the Indian Navy shall be entitled to a certificate of service as the master of a foreign-going ship without examination.

(2) A person who has attained the rank of lieutenant or sub-lieutenant in the engineering branch of the Indian Navy shall be entitled without examination, if a lieutenant to a certificate of service as first class engineer, and if a sub-lieutenant to a certificate of service as second class engineer.

(3) The Central Government may, by rules made under this Act and subject to such conditions and restrictions as may be specified therein, provide for the grant of certificates of service to officers of the Indian Naval Reserve Forces who have attained the prescribed ranks.

(4) A certificate of service shall differ in form from a certificate of competency and shall contain the name and rank of the person to whom it is delivered and the Central Government shall deliver a certificate of service to any person who proves himself to be entitled thereto.

(5) Notwithstanding anything contained in this section, the Central Government may, if it is of the opinion that a person who is entitled to a certificate of service under this section is not a fit person to hold such certificate, refuse to grant or deliver such certificate to him.

(6) The provisions of this Act (including the provisions relating to penalties) shall apply in relation to a certificate of service as they apply in relation to a certificate of competency.'

4. On a plain reading of section 80 it is seen that under sub-section (1) of the said section, any person who has attained the rank of lieutenant in the executive branch of the Indian Navy becomes entitled to a certificate of service as the master of a foreign going ship without examination. The right conferred under sub-section (1) is subject to the right of the Central Government under sub-section (5) to deny the certificate if it is of the opinion that the person is not a fit person to hold such a certificate. The Central Government has framed rules laying down

procedure for grant of certificates under section 80(1) and (2). The rules merely prescribe that any person entitled to a certificate of service may make an application in the prescribed form to the Chief of the Naval Staff through his commanding officer. Every application received by the Chief of the Naval Staff is required to be forwarded to the Director General of Shipping after recording thereon a certificate as to the correctness of qualifying service mentioned in the application. Rule 4 of the rules provides that the applicant shall then be granted the certificate of service in the appropriate form prescribed in that behalf.

5. Section 80 of the Act was repealed by the Merchant Shipping (Amendment) Act, 1986 (No. 33 of 1986) with effect from 14th August, 1986. Section 5 of the amending Act contains a saving clause and it reads as follows :

'For the removal of doubts, it is hereby declared that the amendments made in the principal Act by this Act shall not apply to, or in relation to, any certificate of service granted under section 80 or recognised under section 86 of the principal Act before the commencement of this Act and the principal Act shall apply in relation to such certificates as if this Act had not been enacted.'

6. The principal controversy arising in these petitions, shorn of its niceties and embellishments, is whether the repeal has affected the right of the petitioners to receive the certificate under section 80, even though they had admittedly acquired the rank of lieutenant prior to repeal of section 80. The petitioners contend that right to the said certificate once accrued, was a vested right and could not be divested except by express legislation to that effect. According to the petitioners, the repeal of section 80 by the Amending Act does not destroy or obliterate or affect an accrued or an acquired right. Hence, the petitioners who became lieutenant during the subsistence of section 80(1) continue to be entitled to the said certificate even after the repeal of section 80 in 1986. The petitioners next contend that the respondents have issued certificates to several other navel officers who are similarly situated as the petitioners. In fact, names of two officers namely, Siddappa Basavaraj Chander and Sushil Kumar Sharma are mentioned as the beneficiary of the certificate even after the repeal of this section. It is contended that the respondents cannot discriminate amongst different officers. In

short, the action of the respondents is also impugned on the ground of discrimination being violative of Article 14 of the Constitution.

7. In contesting the petition, the respondents have relied upon the affidavit of Capt. A. Mahapatra, Deputy Nautical Adviser to the Government of India. Briefly, the defence, as disclosed in the affidavit, is that the right to obtain certificate under section 80(1) was not a vested right and, therefore, after repeal of the said section, the petitioners are not entitled to a certificate of service without passing the examination as prescribed in the rules. It is stated that after the repeal of the section the Government under the powers vested in section 87 of the Act has, framed new rules providing for necessary procedure for obtaining a certificate of competency. It is further submitted that the procedure for passing the examination is in conformity with an international convention known as the Standard of Training and Certification of Watch keeping for Seafarers (STCW) Convention, 1978 which has been ratified by the Government of India. It is contended that the convention does not permit issue of any such certificate without passing the examination. It is also contended that the issue of certificate of competency in conformity with the STCW convention enables Indian ships to trade freely without being detained by the Port State Control authorities overseas and also enable Indian officers to seek employment on foreign flag ships. It is stated that the convention came into force internationally on 24th April, 1984. The Government of India deposited the instrument of ratification of this convention with the International Maritime Organisation on 16th November, 1984 and it became applicable to India with effect from 16th February, 1985. It is stated that the masters, chief mates, chief engineers, second engineers and watch keeping officers on both deck and engine room have to pass the appropriate examination to the satisfaction of the administration before he is considered suitable for working in respective capacity. It is, therefore, contended that in case certificates are issued in violation of international convention, then Indian ships would be liable for detention while trading overseas. Reliance is also placed on the rules which gives certain concessions to the naval officers. As regards the allegations that the respondents have adopted discriminatory attitude, it is contended that the certificates which were issued after the repeal of the section were in fact kept ready before the repeal but were issued after the repeal to avoid serious manpower planning

problems. It is, therefore, stated that the petitioners are not entitled to a certificate after the repeal of section 80 even though they have attained the rank of lieutenant prior to the repeal of the said section.

8. Dr. Chandrachud, learned Counsel for the petitioners strenuously contended that the right to receive a certificate under section 80 was vested right already accrued to the petitioners prior to the repeal and it is not wiped out or swept away by reason of the repeal in the absence of any contrary intention expressed by the legislature. Dr. Chandrachud placed reliance on section 6 of the General Clauses Act. Section 6 of the General Clauses Act read as follows:

'6. Effect of repeal.---Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made then, unless a different intention appears, the repeal shall not -

(a) revive anything not in force or existing at the time at which the repeal takes effect ; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against an enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.'

8. The objective of section 6 is to ensure protection of any right or privilege acquired under the repealed Act. The only exception to it is its legislative intention to the contrary i.e., the repealed Act may expressly provide or it may impliedly

provide against continuance of such right, obligation or liability. The controversy thus is narrowed down to two questions, namely, whether the right conferred by section 80(1) was a vested right protected by section 6 Clause (c) and, whether any right accrued to the petitioners under the repealed Act which could be said to continue unaffected by the repealed Act?

9. It is well settled that the provisions of section 6(c) of General Clauses Act are not intended to preserve the abstract rights conferred by the repealed Act. It only applies to the specific rights given to an individual upon the happening of one or other of the events specified in the statute. For the purpose of Clause (c), the right must be accrued and not merely an inchoate one. The distinction between what is and what is not a right preserved by section 6 of the General Clauses Act, it is said, is often one of great fineness. What is unaffected by the repeal is a right 'acquired' or 'accrued' under the repealed statute and not 'a mere hope or expectation' of acquiring a right or liberty to apply for a right. As observed by Lord Morris, in *Director of Public Works v. Ho Po Sang* (1961) 2 All E.R. 721 'It may be, therefore, that under some repealed enactment, a right has been given, but that, in respect of it, some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should be or should not be given. On a repeal the former is preserved by the Interpretation Act. The latter is not. ' The above passage was referred to with approval in *M.S. Shivananda v. K.S.R.T. Corpn.*, : (1980)ILLJ77SC . This question was again considered in *M/s. Gurcharan Singh v. Yashwant Singh*, : AIR 1992 SC180 . It was held that right under section 6(c) may not be a vested right or a fundamental right but it certainly is civil right which could be enforced in a Court of law and any authority acting in contravention of it can be forced to act in accordance with it.

10. Section 80(1) provides that a person who has attained the rank of lieutenant in the executive branch of the Indian Navy shall be entitled to a certificate of service as the master of a foreign going ship without examination. This is an ascertained right conferred in favour of an individual upon happening of a particular event. The grant of certificate is almost a matter of right save and except that under sub-

section (5) the Central Government has given power to deny the certificate to a person if it is of the opinion that the person who is entitled to a certificate is not a fit person to hold such certificate. But barring the Government's right to deny the certificate under sub-section (5), the right to receive certificate under section 80(1) is virtually an indefeasible right accrued to the officer on attaining the rank of a lieutenant. The right of a person to claim a certificate of service gets crystallized as soon as he attains the rank of lieutenant in the executive branch of the Indian Navy. Dr. Chandrachud is therefore right in his submission that the right under section 80(1) is a vested right accrued to the officer on attaining the rank of lieutenant.

11. Now we have to examine whether the new law expressly or otherwise manifests an intention to wipe out or sweep away those rights which had accrued under the old law. When there is a repeal of a statute accompanied by reenactment of a law on the same subject, the provisions of the new enactment would have to be looked into not for the purpose of ascertaining whether the consequences envisaged by section 6 of the General Clauses Act ensued or not - section 6 would indeed be attracted unless the new legislation manifests a contrary intention - but only for the purpose of determining whether the provisions in the new statute indicate a different intention. In *M/s. P.V. Mohammad Barmay Sons v. Director of Enforcement*, : 1993 CriLJ197 the Supreme Court observed :

'What the Court is to enquire into is whether the Act is incompatible with the repealed Act and whether it manifested any contrary intentions to the Repealed Act. Unless a different intention has been manifested in the Act, the Repealed Act would continue to be operative. Even in a case of bare repeal accompanied by a fresh legislation on the same subject, the provisions of the new Act will have to be looked into to find where and how far the new Act envisages a contrary intention affecting the operation of section 6 of the General Clauses Act. Unless such contrary intention is manifested, liabilities, penalties, forfeiture or punishment under the Repealed Act will continue to exist and remain in force by operation of section 6 of the General Clauses Act.'

Mr. Shah, learned Counsel for the respondents brought to my attention the saving clause. The learned Counsel argued that the saving clause has declared that the amendment shall not apply to certificate already granted before the commencement of the Act and that the principal Act shall apply in relation to such certificate as if this Act had not been enacted and, therefore, by necessary implication it demonstrates the legislative intention that cases where the certificate is not granted are not saved. On the other hand Dr. Chandrachud submitted that it is not necessary to save a right expressly in order to keep it alive after the repeal of section 80(1). Section 6(c) saves accrued rights unless they are taken away by the repealing statutes. The Counsel submitted that there is nothing in the saving clause to indicate any such taking away of the rights either expressly or by implication.

12. It is well settled that a saving provision in the repealing statute is not exhaustive of the rights which are saved or which survive the repeal of the statute under which such rights had accrued. In the present case the savings clause begins with the words 'for removal of doubts' which rather indicates that the savings clause is by way of abundant caution. In other words the rights which are not saved by the savings provisions are not destroyed but they are saved by the principles embodied in section 6(c). In this connection reference may be made to the decision of the Supreme Court in Commissioner of Income-tax. U.P. v. M/s. Shah Sadiq & Sons, : [1987]166ITR102(SC) . There a question arose as to whether the right given to the registered partnership firm under the 1922 Act to carry forward the loss in speculation business and get it set off in future years was an accrued and vested right and it was not taken away expressly or by necessary implication by Clause (b) of section 297(2). It was held by the Supreme Court that the right is saved by section 6(c) of the General Clauses Act. It was argued before the Supreme Court that the savings provisions in the repealing statute do not save the right in question. The Supreme Court observed in paragraph 15 as follows :

'In this case the 'savings' provision in the repealing statute is not exhaustive of the rights which are saved or which survive the repeal of the statute under which such rights had accrued. In other words whatever rights are expressly saved by the 'saving' provision stand saved. But, that does not mean that rights which are not

saved by the 'savings' provisions are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind section 6(c), [General Clauses Act, 1897](#). The right to carry forward losses which had accrued under the repealed Income-tax Act 1922 is not saved expressly by section 297, Income-tax Act, 1961. But, it is not necessary to save a right expressly in order to keep it alive after the repeal of the old Act of 1922. Section 6(c) saves accrued rights unless they are taken away by the repealing statute. We do not find any such taking away of the rights by section 297 either expressly or by implication.'

13. This legal position was reiterated by the Supreme Court in *Bansidhar v. State of Rajasthan*, : [1989]2SCR152 . There the Supreme Court held that the saving provision in repealing statute is not exhaustive of rights and obligations so saved or rights that survive the repeal. In paragraph 13 of the judgment, the Supreme Court observed :

'A saving provision in a repealing statute is not exhaustive of the rights and obligations so saved or the rights that survive the repeal. It is observed by this Court in *I.T. Commr., U.P. v. Shah Sadiq & Sons*, : [1987]166ITR102(SC) :

'.....In other words whatever rights are expressly saved by the 'saving' provision stand saved. But, that does not mean that rights which are not saved by the savings provision are extinguished or stand ipso facto terminated by the mere fact that a new statute repealing the old statute is enacted. Rights which have accrued are saved unless they are taken away expressly. This is the principle behind section 6(c), [General Clauses Act, 1897](#).....'

We agree with the High Court that the scheme of the 1973 Act does not manifest an intention contrary to, and inconsistent with, the saving of the repealed provisions of section 5(6A) and Chapter III-B of '1955 Act' so far as pending cases are concerned and that the rights accrued and liabilities incurred under the old law are not effaced. Appellant's contention (a) is, in our opinion, insubstantial.'

14. Thus the fact that the savings clause has not dealt with the rights of the petitioners does not necessarily mean that their rights are extinguished or stand ipso facto terminated by the repeal. In my view, the provisions of the savings clause do not disclose any contrary intention of the legislature. Therefore, the right accrued to the petitioners on attaining the rank of lieutenant in the executive branch of the Indian Navy remains unaffected by the repeal of the Act. Therefore, the right given to the petitioners under section 80(1) is a right which enforceable in law. This right accrued to the petitioners on attaining the rank of lieutenant. In my view, by virtue of section 6(c) of the General Clauses Act, the petitioners are entitled to receive the certificate even after the repeal of the section.

15. It has been brought to my notice that even after the repeal certificates were issued to large number of similarly placed naval officers. The explanation given in that behalf is that in those cases the certificates were already prepared and kept ready before the repeal and they were actually issued by the authority after the repeal is not really convincing. It is, however, not necessary to express any opinion on this aspect since I am of the view that the petitioners are entitled to certificate of service by virtue of section 6(c). Lastly, it is argued by Mr. Shah that the law has been changed pursuant to a international convention and the issuance of certificates will be violation of the convention. I do not see any merit in the contention of Mr. Shah. Even according to the respondents the convention became applicable to this country in 1986. We are dealing with cases of officers who have attained the rank of commander long prior to the repeal of the Act. Thus their entitlement to a certificate is prior to the signing of the convention and the consequent repeal of section 80(1) and therefore merely because the certificates were not issued in their favour prior to the repeal cannot take away the right accrued to them under the repealed provisions of section 80(1). The petitioners are entitled to issuance of certificate on the basis of the law as existed prior to the repeal in 1986. Therefore, the argument of Mr. Shah that the issuance of certificate will be violation of the convention cannot be accepted.

16. In the result, rule issued on the petition is made absolute in terms of prayer (a). Certificates to be granted to the petitioners subject to the verification of the conduct of the officer as required under section 80(5) of the Act within six weeks

from today. No order as to costs.

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