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Court : Chennai

Decided On : Feb-19-1965

Reported in : AIR1966Mad31

Judge : Veeraswami and ;Kunhamed Kutti, JJ.

Acts : Madras Electricity (Supply) Act, 1948 - Sections 1(3), 1(4), 5, 5(1) and 60; Minimum Wages Act - Sections 4(1)

Appeal No. : Civil Revn. Petn. Nos. 2489 of 1961 and 1920 of 1963

Appellant : Manicka Mudaliar and anr.

Respondent : Madras State Electricity Board

Judgement :

Veeraswami, J.

(1) These two petitions have been posted before us as they involve a point or importance relating to the construction of two of the provisions of Electricity (Supply) Act, 1948. The petitioners were defendants in two suits brought by the Madras State Electricity Board for recovery of arrears of charges for electricity supplied. In one of these petitions the charges related to the period November 1957 to March 1958. One of the defences which the Court below did not accept was that the Electricity Board has not been duly constituted under S. 5 so that it

cannot have the benefit of S. 60, which means that the Board could not maintain the suits.

(2) The question turns on the construction of sub-section (4) of S. 1 of the Act, which reads :

'The remaining provisions of this Act shall come into force in a State on such date, not later than two years from the coming into force of the sections, Schedules and Table mentioned in sub-section(3), as the State Government may, by notification in the Official Gazette, appoint;

Provided that the Central Government may as respects any State extend the said period of two years and in such event the remaining provisions of the Act shall come into force in that State on such date, not later than the extended period, as the State Government may, by notification in the Official Gazette, appoint'.

Ss. 5 and 60 are among the provisions contemplated by sub-section(4). The Central Government made a notification which has been republished in the Fort St. George Gazette dated 17-4-1957 in exercise of its powers under the proviso by which it extended the period of two years to 30-6-1957 in the case of the State of Madras. On 12-6-1957, the State Government, having regard to the earlier Notification of the Central Government, fixed 1-7-1957 as the date on which the remaining provisions of the Act other than the sections and schedules in sub-s. (3) of S. 1 of the Act should come into force in this State. On the same day the State Government constituted the Madras Electricity Board in exercise of its powers under S. 5(1) of the Act. The contention for the petitioners is that inasmuch as the provisions in question were notified to come into force on 1-7-1957, the notification was not competent. It is said that the words 'shall come into force in a State on such date not later than' mean that there is no power to bring those provisions into force with effect from a date later than two years or ten years as the case may be and since 1-7-1959 was after the period of ten years, S. 60 has not been validly brought into force and so too the Board has not been duly constituted.

(3) The Madras Electricity (Supply) Act was enacted to provide for rationalisation of the production and supply of electricity and generally for taking measures

conducive to the development of electricity. One of the objects of the legislation, as appears from the statement of objects and reasons, which we think it is permissible for the Court to look into for the present purpose, is that it became necessary that the appropriate Governments should be vested with the necessary legislative powers to link together under one control development of electricity in contiguous areas by the establishment of what is generally known as the 'Grid System'. With that object in view power is conferred to facilitate the establishment of the system in newly licensed areas and also to control the operations of existing licensees so as to secure fully co-ordinated development. But as is evident from the proviso to sub-section(4), the Central Government considered that not all the State Governments might act and co-operate simultaneously within the prescribed period and that it would be necessary therefore to enlarge the time limit for the State Governments to constitute electricity Boards in the relative States and bring into force the sections and constitute Boards.

Having regard to this, it does not appear that the legislature intended by sub-section (4) and its proviso that unless the State Government acted within the period specified and by notification brought into force the relevant provisions, there should be no power thereafter for the purpose. To construe in that manner would defeat the very object of the Act. We think, therefore, that notwithstanding the phraseology used both in the main part of sub-section(4) and also in the proviso including the word 'shall', both are only directory and not mandatory. The sub-section with its proviso, in our view, has no more effect than that the legislature desired that the State Governments should as far as possible comply with the time limit and the intention was not that if they did not do so, the Act must fail. In construing the sub-section and the proviso and must have regard to the entirety of the Act in order to gather the intention of the words used for bringing the provisions in question into force. After all, as far as we can discover, there is no particular compulsive force or purpose in a specified date on which the provisions of the Act should come into force and otherwise they should never.

(4) Our attention was invited to D. M. S. Rao. v. State of Kerala, : (1963)ILLJ176Ker . But the actual words which the Court there was construing were some what different. That matter arose under the Minimum Wages Act and

S. 4(1) of the Act provided that:

'The appropriate Government shall, in the manner hereinafter provided fix the minimum rates of wages payable in the employees employed......... in an employment added to Part I or Part II of the Schedule by notification under S. 27 before the expiry of one year from the date of the notification'.

No such fixation was made before the expiry of the specified date. Nevertheless Vaidyalingam J. upheld the validity of the fixation and in doing so the learned judge has reference to the object of the Act and the purpose it was intended to serve.

(5) Maxwell on Interpretation of Statutes 11th Edn at page 369 also points out:

'It has often been held, for instance, when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, the Act was directory only and might be complied with after the prescribed time'

That precisely is the position here. It cannot therefore be held that merely because the notification which was made within the period specified in sub-section(4) and the proviso brought the relative provisions into force immediately after that period, they are invalid.

(6) The petitions are dismissed, but with no costs.

II/RSK/R.G.D.

(7) Petitions dismissed.