
(1975) 04 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 681 of 1973

Ajit Singh Saudaoar Singh

APPELLANT

Vs

State Industrial Court, Indore and others

RESPONDENT

Date of Decision : 04-04-1975

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1979) ILR (MP) 961 : (1975) JLJ 644

Hon'ble Judges : G.P. Singh, J;C.P. Sen, J

Bench : Division Bench

Advocate : Gulab Gupta, for the Appellant; J.P. Bajpai, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sen, J.—This is a petition under Articles 226 and 227 of the Constitution of India for quashing the orders of the State Industrial Court and State Labour Court. By this order, the connected Petition Misc. Petition No. 297 of 1974 (Gomti Prasad v. The Industrial Court, M. P., Indore and others) is also disposed of, wherein also the prayer is for quashing of the orders of the State Industrial Court and the Labour Court.

2. In this petition, the petitioner Ajit Singh was employed as a driver on the Work-charged Establishment of the Construction Department of the Bhilai Steel Plant from 6.5.1963 and his services were terminated with effect from 3.4.1968. In the connected case, the petitioner Gomti Prasad was also employed as a driver in the same department since 29.11.1963 and his services were terminated with effect from 31.3. 1966. Both filed separate applications along with others similarly placed u/s 31 (3) of the M. P. Industrial Relations Act 1960, before the Labour Court, Raipur. Their application were opposed by the respondent No. 3 and a preliminary objection was raised by the management that both were employed in the construction side of the Steel Plant, which is not an "industry" within the meaning of the definition of "industry" under the Act. The Labour Court framed a preliminary issue on this objection and after

recording evidence on the point, the objection was accepted and the applications were accordingly rejected by a common order. In revisions, the State Industrial Court confirmed the order of the Labour Court by a common order. Both the Courts had relied on a decision of this Court in *Jamul Cement Works Vs. State Industrial Court and Others*, . It is now contended that the Construction Department is a part and parcel of the Bhilai Steel Plant and it is incidental and ancillary to the industry of Iron and Steel and in the alternative, the Construction Department comes within the meaning of "Engineering Industry" as given in the Schedule to the Act.

3. The respondent No. 3 has opposed the petitions and supported the orders of the Courts below. It is submitted that the Work-charged Establishment of the Construction Department was a temporary department and it was entrusted with construction work of new units of the plant for expansion of the capacity of the Plant from 1 million to 2.5 million tons. In the year 1966, the construction work was practically in the last phase as most of the units had been constructed and commissioned. The construction work was accordingly tapering off. The construction work was done for the requirements of the plant on "no profit basis" and could not be an "industry". It was not done by way of trade or business, The management made every effort to deploy the employees working in the Construction Establishment and in fact the petitioners were provided with alternative jobs in the Border Roads Organisation, but it seems, the petitioners did not like the jobs and left the same. However, after receiving payments of all their dues, the present proceedings were started. The petitions are liable to be rejected.

4. The Courts below have found that the Construction Department only carries on such construction, which pertain to the Bhilai Steel Plant and which is aimed at affording facilities to the employees of the Plant. The works of the Banks, Posts and Telegraphs, Special Armed Police Force were undertaken for affording facilities to the Plant employees. Such works were constructed on the request of the parties concerned, The works were not carried on commercial lines and no profits were earned. Estimates of these works were prepared and tenders were invited and the works were given to the contractors for execution and cost of the works were recovered by instalments from the parties. The staff employed on the construction side supervised these works. Along with these works, certain works pertaining to the Plant were also carried out. The costs of constructions were not recovered from the departments for which the works were done. No work of any private individual or institution was ever done. The Construction Department has some Work-charged employees and some regular employees. But all the employees were temporary; regular employees were only entitled to monthly pay. The department continued since 1955, since the capacity of the Plant was raised from 1 million ton to 2.5 million tons and then to 3.2 million tons and final target is for 7 million tons. But this department is quite separate from the Civil Engineering Department, which is a permanent establishment and looks after maintenance of the Plant and the township.

5. In exercise of powers conferred u/s 1 (3) of the M. P. Industrial Relations Act, 1960, by notification dated 31-12-1960, the State Government has directed all provisions of this Act to apply in respect of the undertakings in the industries specified therein. Amongst them are "Iron and Steel" as item No. 2 and "Engineering" as item No. 16. The petitioners want to bring their case under either of these two heads. It is not disputed that "Engineering" includes "Civil Engineering" and construction work, if carried on as a trade or business or calling of employers, would come under this category of industry. "Undertaking" has been defined under the Act as a concern in any industry. It is also not in dispute that "Employed in any industry" would include persons employed in operations incidental to the industry. In *J.K. Cotton Spinning and Weaving Mills Co., Ltd. Vs. Badri Mali and Others*, , the Supreme Court has held that Mails, employed by the Mill to look after the garden of the bungalows within the compound of the Mill occupied by its officers, are engaged in operations incidentally connected with the industry carried on by the Mill.

6. The first question is whether the employees in the Construction Establishment can be said to be engaged in operations incidental to the industry of Iron and Steel. This has been answered by a Division Bench of this Court in *Jamul Cement Works v. State Industrial Court* (supra) to this effect:

The word "cement" means cement manufacturing industry and activities or operations incidental to the main industry of manufacturing cement. The setting up and construction of a cement factory is no doubt essential before cement can be manufactured and thereafter distributed and sold. But the construction of a cement factory cannot in any way be likened to any activity or operation in the manufacture of cement or its distribution or sale. It is not necessary that a company engaged in the manufacture should itself set up the cement factory. The constructional work can be entrusted to any contractor or a firm of structural engineers, and when the construction is complete the company can take over the completed construction and commence manufacturing cement. The contractor or the firm, to whom the constructional work has been entrusted, cannot clearly be said to engage in the manufacture of cement. For the same reason, if a company, which intends to manufacture cement, itself undertakes the constructional work of its factory, then it cannot be said that the cement industry has come into existence from the moment the constructional work started.

Again, the constructional work of a cement factory cannot be said to be an activity or operation incidental to the main industry of cement manufacturing. The constructional work is not something which follows or depends upon or appertains to the manufacturing of cement as the primary activity. The constructional work of a cement factory is in itself an independent primary work. In our opinion, to say that the construction of a cement factory is a part of cement industry, is to ignore totally the real nature both of the cement manufacturing industry and of the construction of a cement factory.

7. This decision was sought to be distinguished by stating that it was a case of

setting up of a cement factory and was prior to the stage of commencement of the manufacturing process. But the contention is not correct. The cement factory was already in operation and two additional kilns were being constructed for raising the capacity of the Plant, and the petitioners there were engaged in this construction work, just as in the present case. Recently, this Court in *Samyukta Khadan Majdoor Sangh, Rajnandgaon v. M/s. Hindustan Steel Ltd* 1973 M P L J 269. held that though broadly speaking, industry of "Iron and Steel" is capable of including extraction or production of raw material, i.e., iron ore, but under the M. P. Industrial Relations Act, 1960, it has to be used in a limited sense; the extraction and production of raw materials will not be comprehended within the Industry of Iron and Steel. Mining will be separate industry, governed by the Industrial Disputes Act, 1947. Therefore, it is clear that mining of iron ores could not be said to be operations incidental to the manufacture of Iron and Steel although without the ores, no iron and steel could be manufactured. Similarly, it can be said that Construction Department, even if an undertaking, broadly speaking it is not incidental to the Industry of Iron and Steel Industry. The Civil Engineering Department, looking after the maintenance of the Plant and the township, can be said to be an undertaking incidental or ancillary to the Iron and Steel Industry. Because, without it, it would be difficult to run the Plant in the absence of proper maintenance. Therefore, Construction Department, to be an industry must come under the independent head of "Engineering".

8. So, it has to be seen whether the Construction Department of the Bhilai Steel Plant could be said to be run as an "Industry" of the Plant. The definition of "industry" in the State Act is similar to that in the Industrial Disputes Act, 1947. The definition is in two parts. In its first part, it means any business, trade, undertaking, manufacture or calling of the employers. By this part, "industry" is determined by reference to the occupation of employers. The second part views the matter from the point of view of employees and is meant to include something more than the term principally denotes. By the second part of the definition "any calling, service, employment, handicraft or industrial occupation or avocation of employees" is included in the concept of industry. This part gives an extended connotation to this term. If an activity can be described as an industry with reference to the occupation of the employer, its ambit, by virtue of the second part, takes in the different kinds of activities of employees mentioned therein. But, the second part standing alone, cannot define "industry".

9. The definition of "Industry" has a comprehensive import and the problem is as to where the line of demarcation should be drawn and what limitation can be and should be reasonably implied in interpreting the wide words of the definition. The Supreme Court in *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, has dealt with some of the important attributes of an industry as under:--

(i) It must bear the definite character of "trade" or "business" or "manufacture" or "calling", or must be capable of being described as an undertaking in material

goods or material services.

(ii) The activity must not be casual, but must be distinctly systematic. The work for which labour or workmen is required, must be productive and the workmen must be following an employment, calling or industrial avocation.

(iii) The labour force includes not only manual or technical workmen, but also those whose services are necessary or considered ancillary to the productive labour of others.

(iv) Liberal arts, learned professions, educational undertakings and professional services dependent on the personal qualification and ability of the donor of services are not included. Domestic employment and administrative services of public officials are also excluded.

10. Here, in this case, it could not be said that the Construction Department of the Bhilai Steel Plant is an "industry". M/s. Hindustan Steel, Ltd. is not carrying on any trade or business in building constructions or other constructional activities. The industry that is being run is that of manufacture of iron and steel. Whatever construction work is carried on is for providing services or facilities to its employees. It is on "no profit basis". In fact actual works are executed by private contractors. The Construction Department only supervises the work. The Department is temporary and of a casual nature. The Department will be wound up as soon as targets are reached. It is true that this Department is in existence since 1955, but as per the return of the respondent No. 3, the construction work was in the last phase and it was tapering off in 1966 when the services of the petitioner were terminated. A statement has been made at the bar on behalf of M/s. Hindustan Steel, Ltd. that that target of 4 million tons is practically reached and the final target of 7 million tons is expected to be reached in the near future as basic structures for the expansion are ready. We, therefore, feel that the Courts below were justified in holding that the Construction Department of the Bhilai Steel Plant is not an "industry" within the meaning of the M. P. Industrial Relations Act, 1960, by relying on the decision of this Court in *Jamul Cement Works v. State Industrial Court* (supra).

11. The petitions, therefore, fail and they are dismissed. There shall be no order as to costs. Security deposit be refunded to the petitioners.