

(1969) 09 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 191 of 1968

Amarnath Singh

APPELLANT

Vs

Presiding Officer, Industrial Tribunal and Others

RESPONDENT

Date of Decision : 06-09-1969

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 2(6), 28, 28(1)
Motor Transport Workers Act, 1961 — Section 1(4), 2

Citation : AIR 1970 Patna 269 : (1969) 17 BLJR 1078 : (1970) 20 FLR 64 :
(1969) 2 PLJR 486

Hon'ble Judges : S.C. Misra, C.J.; S.N.P. Singh, J.; S. Anwar Ahmad, J

Bench : Full Bench

Advocate : Sushil Kumar Jha, Rama Raman and Surendra Kumar Singh, for the Appellant; S. Mustafi and Bhupendra Nath Sinha, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Kishorebhai Khamanchand Goyal Vs. State of Gujarat and Another, (2003) 8 JT 399 : (2004) 1 LLJ 428 : (2003) 9 SCALE 119 : (2003) 12 SCC 274 : (2003) 5 SCR 1 Supp : (2004) 1 UJ 398

Misra, C.J.—Harindra Dubey (Opposite Party No. 3) was employed as a driver by the petitioner, who owned a small motor transport establishment at Chiraya Tanr in Patna. Opposite Party No. 2 is the Assistant Labour Commissioner, Bihar, u/s 28(1) of the Bihar Shops and Establishments Act, 1953 (8 of 1954), hereinafter referred to as the Act of 1954. Opposite Party No. 1 is the Presiding Officer, Industrial Tribunal, Bihar, appointed u/s 28 of the same Act.

2. An application was filed by Harindra Dubey before the Assistant Labour Commissioner (opposite party No. 2) u/s 28 (1) of the Act of 1954, claim-ins payment of arrears of wages against the petitioner, the amount being Rupees 1,610 plus a certain amount of compensation. It was registered as B. S. E. Case No. 14 of 1966, The claim was allowed by the Assistant Labour Commissioner by his order dated the 14th December, 1966, who directed the petitioner to make

payment of Rs. 2,636 to opposite party No. 3. The petitioner filed an appeal against that order before the Industrial Tribunal, Bihar, who by its order dated the 16th of February, 1968, dismissed the appeal of the petitioner.

3. A preliminary objection was raised by the petitioner before the Assistant Labour Commissioner to the maintainability of the application by opposite party No. 3 under the Bihar Act of 1954 on the ground that he had no jurisdiction to entertain the claim of Harindra Dubey as he was a motor transport worker as defined under the Motor Transport Workers Act, 1961 (hereinafter called the Act of 1961), and, according to a decision of this Court in Bihar State Road Transport Corporation v. Orang Bahadur C. W. J. C. No. 1064 of 1965, D/- 14-10-1966 any matter pertaining to the service conditions of a motor transport worker is governed by the Act of 1961 and not by the Act of 1954. The Assistant Labour Commissioner, however, overruled the preliminary objection on the ground that the petitioner was not registered under the Motor Transport Workers Act, and hence he could not take advantage of the decision of the High Court in the above case.

4. On appeal, however, the Industrial Tribunal did not accept the conclusion of the authority below that the Motor Transport Workers Act could not be made applicable to the case because the petitioner's undertaking was not registered under that Act, but proceeded on a different ground, holding that the judgment of the High Court was not binding on the Tribunal because the High Court dealt with a case regarding discharge while the instant case was one relating to arrears of wages. Further, the Tribunal also proceeded on the ground that opposite party No. 3 was not a motor transport worker governed by this Act, in view of Sub-clause (ii) of Clause (h) of Section 2 of the Act of 1961, Harindra Dubey thus not being a motor transport worker amenable to this Act, his case must be governed by the Act of 1954. Hence the present application to this Court.

5. The matter was heard by a Division Bench, and their Lordships expressed doubt about the correctness of the aforesaid decision of the Division Bench of this Court, and, accordingly, they referred the question for consideration by a larger Bench.

6. Mr. Sushil Kumar Jha, appearing in support of the application, has endeavoured to support the judgment of the Division Bench of this Court. It may be stated that Narasimham, C. J. and R. J. Bahadur, J., who were parties to the aforesaid judgment, have proceeded mainly on the ground that the Act of 1961 is a special Act covering the case of a motor transport worker, whereas the Bihar Act of 1954 is a general Act, apart from the fact that the latter Act is a State Act, whereas the former is a Central Act passed by the Parliament. The Act of 1954 relates to workers in all shops and establishments, whereas the Act of 1961 covers the case of all motor transport workers. He has urged that, since the Tribunal overruled the objection of opposite party No. 3, Harindra Dubey, in regard to the petitioner's undertaking not having been registered under the Act of 1961--and rightly so--the Tribunal should have accepted the contention urged

in support of the preliminary objection of the petitioner to the maintainability of the claim of Harindra Dubey by the Assistant Labour Commissioner under the Act of 1954. Learned Counsel has drawn our attention, in this connection, to the Act of 1954. Section 2(6) of that Act defines "establishment" as follows:--

" "establishment" means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to any business, trade or profession and includes--

(i) administrative or clerical services appertaining to such establishment;

(ii) a shop, restaurant, residential hotel, eating-house, theatre or any other place of public amusement or entertainment; and

(iii) such other establishment as the State Government may, by notification, declare to be an establishment to which the Act applies."

7. Learned Counsel has drawn an elaborate comparison of the provisions of the two Acts, many Chapters under different numbering having common provisions and some Chapters or sections occur in the one but not in the other. It is not necessary for me to set out comparative chart; it is sufficient to state that some Chapters of the Central Act have no corresponding provision in the Bihar Act; for instance. Chapter IV of the Central Act has no corresponding provision in the Bihar Act. Chapter IV of the Act of 1961 provides for those steps which are, in particular, necessary for the welfare of motor transport workers, such as, in Section 8 the maintenance of canteens, 9 rest rooms, 10 uniforms. 11 medical facilities, and 12 first-aid facilities.

These sections, in substance, relate to matters which are relevant only in connection with the performance of his duties by a motor transport worker and not by others, likewise. Section 7 of Chapter III relates to certifying surgeons for the purposes of the Act within such local limits or for such motor transport undertakings or class of motor transport undertakings as it may assign to them respectively, which is not provided for in the Act of 1954. Learned Counsel urged that these specific provisions in the Act of 1961 show that motor transport workers are to be governed by the provisions of that Act, and not by the general Act of 1954, and the decision of the Division Bench, referred to above Bihar State Road Transport Corporation Vs. Orang Bahadur and Another, proceeding, as it does, on an elaborate consideration of the Act of 1961, being a special Act as opposed to the Act of 1954, must be accepted as a sound view, and it cannot be disturbed or modified. It may be stated that the referring Judges, however, have expressed doubt about the correctness of that decision on foot of Section 2(h) of the Act of 1961.

8. Section 2(g) defines a "motor transport undertaking" as meaning

"a motor transport undertaking engaged in carrying passengers or both by road for hire or reward, and includes a private carrier."

Section 2(h) is as follows:--

" "motor transport worker" means a person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transport vehicles and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot clerk, time-keeper, watchman or attendant, but except in Section 8 does not include --

(i) any such person who is employed in a factory as defined in the Factories Act, 1948;

(ii) any such person to whom the provisions of any law for the time being in force regulating the conditions of service of persons employed in shops or commercial establishments apply."

Section 8, however, relating to canteens, applies even to all motor workers who are employed in a factory as in Sub-Clause (i) or any person as referred to in Sub-clause (ii) of Clause (h) of Section 2. The learned referring Judges have been impressed by the provision in Sub-clause (ii) of Clause (h) and learned Counsel for the opposite party has also proceeded along the same line. It seems plausible that Sub-clause (ii) takes out of the purview of this Act any such person to whom the provisions of any law for the time being in force regulating the conditions of service of persons employed in shops or commercial establishments apply. It is urged that any person, to whom the Shops and Establishments Act will be applicable, must also be excluded from the operation of this Act. It has been contended that the view of the Division Bench in the aforesaid decision in regard to the Act of 1961 bring a special Act is, with respect correct (sic); but, since Sub-clause (ii) itself makes an exception with regard to persons who are covered by the expression "shops or commercial establishments", the worker in a motor transport undertaking also must be excluded from the operation of this Act.

It is so because, where a motor transport undertaking is maintained for earning money by providing transport service to passengers, it comes clearly within the ambit of the expression "commercial establishments", and, as such, in view of the clear language of Sub-clause (ii) of Clause (h), workers employed in motor transport undertakings also must be governed by the general Act of 1954 and not by the Act of 1961." Mr. Sushil Kumar Jha, however, has contended that there is a fallacy in this line of reasoning. Section 1(4) of the Act of 1961 states in categorical terms, that that Act "applies to every motor transport undertaking employing five or more motor transport workers." The intention of the Legislature, therefore, is clear beyond question that the Act is intended to be applicable to all motor transport undertakings. What is meant by "motor transport undertaking" is defined in Clause (g) of Section 2. Since it is meant to cover any such undertaking for hire or reward, and includes also a private carrier,

the Legislature, in Clause (g), has obviously included even a commercial establishment which comes within the definition in Clause (g) as being governed by this Act, and not otherwise.

In Clause (h), when it is laid down that the expression "motor transport worker" shall not include a person who is employed in a factory, it refers to those motor transport workers who are employed by the management of a factory for factory purposes, inasmuch as their welfare is governed by the Factories Act, and, likewise, when reference is made to the exclusion of motor transport workers employed in a shop or commercial establishment, the expression "commercial establishment", which alone would be relevant in the present context, must be confined to those commercial establishments which are other than what is covered by Clause (g), assuming such undertakings also to be those to which the expression "commercial establishment" may apply. In the present context, however, the reasonable approach is that, since the dominant intention of the Legislature in Sub-section (4) of Section 1 is to make the Act applicable to every transport undertaking, and the expression "motor transport undertaking" being legislatively defined as including the running of vehicles for hire or reward, it is clear that, even if it be a commercial establishment, the Legislature certainly intended to keep such a commercial establishment out of the purview of the expression "commercial establishment" as it is provided in exception to Clause (h) of Section 2.

Any other interpretation would nullify the entire object of the Act, for, if the Act is not to apply to the motor transport undertaking as mentioned in Clause (g), what will be the object of this legislation? If a motor transport undertaking in Clause (g) is a commercial establishment and if it is excluded, the entire Act turns out to be absolutely meaningless and not being applicable to any undertaking except possibly to an individual owner whose running of a motor transport vehicle cannot be regarded as a commercial establishment, although to exclude even such a venture would amount to straining the language too much. In fact, it may be reasonably contended that, if a motor transport undertaking maintained for earning hire or reward goes out of the ambit of Sub-clause (ii), strictly speaking, it may be difficult to conceive of any case excepting a private carrier to whom the Act will apply. In my opinion, the contention of Mr. Sushil Kumar Jha has considerable force because it must be an incorrect approach to the interpretation of the Act to hold that the Legislature intended to cover nothing by this Act. Moreover, Clause (h) refers to a motor transport worker, whereas Clause (g) refers to a motor transport undertaking. If the Act applies to a motor transport undertaking, an interpretation has to be put upon a motor transport worker in Clause (h), which will be in harmony with Section 1(4) and Clause (g) of Section 2.

There is yet another consideration which is that, in Sub-clause (i) of Clause (h), the expression is that it does not include "any such person", referring to those workers who have been specifically enumerated in Clause (h). The policy of the

Legislature is also clear in the sense that, if motor transport workers are engaged in working for a factory, their welfare is provided for in the Factories Act, and, if they are working for a commercial establishment other than a motor transport undertaking where it is maintained only for the purposes of running the establishment this too must be governed by the special conditions of that commercial establishment which is other than what is referred to in Clause (h), unless the establishment maintained by a factory, shop and commercial establishment is engaged in business contemplated in Section 2 of the 1961 Act. In this connection, learned Counsel has relied upon Maxwell on Interpretation of Statutes (1962 edition) at pages 16, 27 and 32. At page 16, it is stated as follows:--

"It is an elementary rule that a thing which is within the letter of a statute will, generally, be construed as not within the statute unless it be also within the real intention of the legislature, and the words, if sufficiently flexible, must be construed in the sense which, if less correct grammatically, is more in harmony with that intention."

At page 27, Maxwell refers to the context. Since the term "commercial establishments" in Sub-clause (ii) agrees with Clause (g), it must be given a meaning referring to those commercial establishments which are other than what is specifically provided for in Clause (g). It may also refer to the well-known principle of interpretation that a Court of law must always refer to the object of an Act as Craies on Statute Law (sixth edition) has referred at pages 66 and 67, Reference may also be made to the expression *ex visceribus actus* at page 98 of that authority which is that the whole statute is to be construed and not a mere expression here and there because it is well settled that words in a particular statute occurring in a section must be construed not according to the dictionary meaning but as they obtain colour and content from the context in which they have been used. In *Kingston Wharves Ltd. v. Reynolds Jamaica Mines Ltd.* 1959 AC 187 the word "carriage" was construed with reference to what was in the contemplation of the Legislature when the Act was passed; it was not the dictionary meaning which was held to be applicable but what the Legislature in a particular context thought it proper to apply. At page 169, Craies, referring to *R v. Hall* (1822) 1 B C 123 has cited the following passage:--

"The meaning of ordinary words, when used in Acts of Parliament, is to be found, not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used, and the object which is intended to be attained."

This case has been followed in several decisions later on as in *The Lion* 1869 LR 525. In *Edinburgh Street Tramways Co, v. Torbain* (1877) 3 AC 868 Lord Blackburn said:--

"Words used with reference to one set of circumstances may convey an intention quite different from what the self-same Set of words used in reference to another

set of circumstances would or might have produced, and therefore, it sometimes happens that the same words receive a very different construction in different statutes."

In *London Corporation v. Cusack-Smith* 1955 AC 337 Lord Reid observed as follows:--

"It does not necessarily follow that, if Parliament used the same words in quite a different context, they must retain the same meaning."

But the principle of harmonious construction, as I have already stated, is now well settled as Maxwell at page 27 has referred to it with reference to several judicial decisions on this principle. I may refer in this connection only to the observation of Viscount Simons in *Attorney General v. Prince Ernest Augustus of Hanover* 1957 AC 436 as follows:--

"I conceive it to be my right and duty to examine every word of a statute in its context, and I use the word "context" in its widest sense as including not only the enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in *pari materia*, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy."

Reference may also be made to the observations of du Parc L. J. in *Butcher v. Poole Corporation* (1942) 2 All ER 572.

9. In the result, therefore, I am satisfied that the judgment of this Court, referred to above, is correct, though it must be stated that the attention of their Lordships was not drawn to the ambiguity arising out of Sub-clause (ii) of Clause (h) of Section 2 of the Motor Transport Workers Act 1961.

10. The application, therefore, must be allowed and the award of the Tribunal set aside, and it must be held that the Assistant Labour Commissioner had no jurisdiction to entertain this case, and the provisions, of the Motor Transport Workers Act, 1961, should have been resorted to by Opposite Party No. 3 in order to get any relief to which he might be entitled in, relation to his claim against the petitioner. There will be no order as to costs.

S.N.P. Singh, J.

11. I agree.

Anwar Ahmad, J.

12. I agree.