

(1991) 03 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11514 of 1988

Andhra Pradesh State Trade Federation

APPELLANT

Vs

Commissioner of Labour and Another

RESPONDENT

Date of Decision : 15-03-1991

Acts Referred:

Andhra Pradesh Motor Vehicles Taxation Rules, 1963 — Rule 13A
Motor Transport Workers Act, 1961 — Section 1(4), 2, 3

Citation : (1991) 2 ALT 84 : (1991) 2 APLJ 165 : (1992) 2 LLJ 600

Hon'ble Judges : P. Venkatarama Reddi, J;M. Jagannadha Rao, J

Bench : Division Bench

Judgement

Jagannadha Rao, J.—The petitioner is the Andhra Pradesh State Trade Federation, Hyderabad and is a Society registered under the Andhra Pradesh Societies Registration Act. Its members are said to be traders and owners of three wheelers (Autos) and two wheeler vehicles used for distribution of goods in retail in Andhra Pradesh. They state that they are employing one driver per each vehicle. While so, in reply to the letter dated July 11, 1988 addressed to the Commissioner of Labour, Hyderabad, the latter informed the Federation on July 26, 1988 that "according to the definition of Motor Transport Undertaking contained in S. 2(g) of the Motor Transport Workers Act, 1961 (hereinafter called the Workers Act), a "private operator" is also included in that definition and hence the vehicles i.e., "delivery vans/delivery autos employing workers are covered by the Motor Transport Workers Act." The Federation was accordingly advised "to get their undertakings (vehicles) registered (under S. 3) of the Act, with the concerned Labour Officers immediately."

2. Questioning the validity of the said letter of the Commissioner of Labour dated July 26, 1988, the Federation of the Traders has filed the present writ petition. It seeks the issue of a writ of Mandamus directing the respondents not to insist upon the members of the petitioner-Federation to register their establishment under the Workers Act, 1961 and to consequently direct the 2nd respondent (the Regional Transport Authority, Hyderabad) to renew the registration of the

members of the petitioner-Federation without insisting upon them to produce the registration certificate under S. 3 of the Workers Act, 1961.

3. In the writ petition, two points are raised by Mr. S. V. Bhat, namely that the members of the Federation who are traders having their own vehicles cannot be treated as employers of "motor transport undertakings" as defined under S. 2(g) of the Workers Act, 1961 and that in any event the workmen employed in connection with these vehicles do not fall within the definition of S. 2(h) defining "Motor Transport Worker" inasmuch as these workers are covered by the Andhra Pradesh Shops and Establishments Act, 1966 (now 1988). In some cases, it is now revealed, that the family members of the owner of the vehicles are driving the vehicles.

4. These contentions are resisted by the learned Government Pleader, Sri P. Nagaseshaiah. He contends that under S. 1(4) of the Workers Act, 1961, an order has been issued in G.O.Ms. No. 1624. Home (Lab. II) Department dated October 11, 1968 stating that every employer employing one or more transport workers shall come within the purview of the said Act. The members of the Federation are within the definition of "motor transport undertaking" as defined in S. 2(g). It is admitted in the counter that these members do not charge any amount from the retail dealers nor do they hire their vehicles for other purposes. Further the amendment to Rule 13A of the Andhra Pradesh Motor Transport Taxation Rules, 1963 issued in G.O.Ms. No. 122 dated March 30, 1988 requires proof of registration under the Workers Act, 1961 for securing a licence for the use of the vehicle in a public place upon payment of the tax. Reliance is placed in the counter on the judgment of the Supreme Court in *Municipal Council, Raipur v. State of M. P.*, (AIR) 1970 SC 1923 and of the Patna High Court in *Bihar State Road Transport Corporation v. Orang Bahadur* (1967-I-LLJ-597)

5. On the basis of the above contentions the following points arise for consideration :

(1) Whether the members of the petitioner Federation who are traders using transport vehicles for the purpose of delivery of goods can be said to fall within S. 2(g) of the Workers Act, 1961, defining "motor transport undertaking"?

(2) Whether the Workers Act, 1961 does not, in view of S. 1(4), apply unless (a) the undertaking is a "motor transport undertaking" as defined in S. 2(g); and also (b) the workmen employed are "motor transport workers" as defined in S. 2(h), and both conditions must be satisfied ?

(3) Whether the workmen, if any, employed by the traders for running their vehicles stand excluded from the definition of "motor transport workers" in S. 2(h) by virtue of being employees covered by A.P. Shops and Establishments Act, 1966 (now 1988), in view of the language of S. 1(4) ?

(4) To what relief is the petitioner entitled ?

6. Point No. 1 : The Workers Act, 1961 is an Act to provide for the welfare of

motor transport workers and to regulate the conditions of their work. S 1(4) reads :

"Selection 1 (4) : It applies to every motor transport undertaking employing five or more motor transport workers.

Provided that the State Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply all or any of the provisions of this Act to any motor transport undertaking employing less than five motor transport workers."

In exercise of the rule making power in S. 40 of the Act, the State Government has issued G.O.Ms. No. 1624 Home (Lab. II) Department dated October 11, 1968 stating that every employer employing one or more "motor transport workers" shall come within the purview of the Workers Act, 1961. The definition of "motor transport undertaking" in S. 40 of the Workers Act, 1961 reads thus :

"S. 2(g) : "motor transport undertaking" means a motor transport undertaking engaged in carrying passengers or goods both by road for hire or reward, and includes a private carrier."

Under S. 3 of the Act, every employer of a motor transport undertaking to which the Act applies shall have the undertaking registered under the Workers Act, 1961. As per the amendment to Rule 13A of the Rules made under the A.P. Motor Vehicles Taxation Act, by G.O.Ms. No. 122 dated March 30, 1988, it is now required that a person to whom the Workers Act, 1961 applies, cannot pay the tax and receive a licence to use the vehicle in a public place, unless he produces proof of registration under the Workers Act, 1961. In W.P. No, 11427/89 etc. dt. November 9, 1990 we have upheld the validity of the said Rule 13A.

7. In our view, the members of the petitioner Federation clearly fall within the definition of "motor transport undertaking" in S. 2(g) of the Workers Act, 1961 in as much as they own and employ vehicles and are therefore "private carriers" in their trade. The Supreme Court in Raipur Municipality v. State of M. P. (supra) was dealing with a similar case. There a complaint was filed against the Municipal Council for non-registration of the Council under the Workers Act, 1961 even though it was employing 50 transport workers including drivers, conductors, mechanics etc. Confirming the order of the High Court, the Supreme Court held that the Act was applicable inasmuch as the Council fell within the words "private carrier" in the definition of "motor transport undertaking" in S. 2(g). Their Lordships observed (at 1924 of AIR) :

"It seems to us that the accused fell within the definition of "private carrier" inasmuch as the Council owned transport vehicles and used these vehicles solely for the carriage of goods which are its property."

Following the above said decision, we hold that the members of the Federation are to be treated as employers of "motor transport undertakings" within the meaning of the said words in S. 2 (g) of the Workers Act, 1961 whether or not

the vehicle is employed for hire or reward. The impugned order of the 1st respondent is, to that extent, correct. Point No. 1 is held accordingly against the petitioner and in favour of the respondent No. 1.

8. Point Nos. 2 and 3 :- This is the more important question. We have already noted that under S. 1(4) of the Workers Act, the Act is made applicable to every "motor transport undertaking" employing five or more "motor transport workers" and that by a G.O. issued by the state Government, the Act is made applicable even if one motor transport worker is employed in the undertaking.

9. In our view, under S. 1(4), not only should the undertaking be a "motor transport undertaking" as defined by S. 2(g) but the workers employed must also be "motor transport workers" as defined in S. 2(h) of the Act. Unless both the conditions are satisfied, the Workers Act, 1961 cannot be said to be attracted.

10. We have already held under point No. 1 that the vehicles run by the members of the petitioner-Federation, being "private carriers" fall within the definition of "motor transport undertaking" as defined in S. 2(g). Therefore one of the conditions stipulated in S. 1(4), for the Act to apply is satisfied. The question is whether the second condition, namely, whether the worker or workers are "motor transport workers" as defined in S. 2(h), is also satisfied. This question in its turn depends on the question whether the workers fall within the exclusionary part of the definition of "motor transport workers" in S. (h). It is therefore necessary to read S. 2(h). That definition reads as follows :

"Section 2 (h) :- "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 vehicle 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 S. 8, does not include -

(i) any such person who is employed in a factory as defined in the Factories Act, 1948 (63 of 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."

11. A plain reading of the definition in S. 2(h) shows that though a person may be a "motor transport worker" falling under the main part of the definition, he will be taken out of the purview of the said expression if he is a person to whom the provisions of any law relating to Shops and Establishments which regulates the conditions of service of persons employed therein apply. Therefore, if the driver of the private carrier employed by the owner thereof is governed by the provisions of the Shops Act, the said worker cannot obviously be treated as a "motor transport worker. In such an event, even if the undertaking was a

"private carrier" operated by a transport worker and therefore becomes a "motor transport undertaking" as defined in S. 2(g), the Act will not, as stated in S. 1(4) apply, because the second condition stated above is not satisfied.

12. The Kerala High Court in *A. B. Transport v. Ramakrishna* (1967-I-LLJ-498) has taken a similar view and further held that there is no repugnancy between the Workers Act and the State Act relating to Shops and Establishments. There, the respondent was a workman whose termination by the transport company was set aside by the first appellate authority under S. 18 of the Kerala Shops and Commercial Establishments Act, 1960 and back-wages were awarded. The employer filed a writ petition stating that the State Act was repugnant to the Central Act i.e., the Workers Act, 1961. The counsel for the employer compared Ss. 13, 26, 15, 16, 19, 27, 28, 25, 21 and Ss. 8 to 12 of the Central Act with Ss. 6 to 9, 11, 13, 14, 12, 19 and 20 of the State Act and contended that there was substantial identity between various provisions of the two Acts and that there was repugnancy. He also relied upon S. 37 of the Central Act. S. 37 gives overriding effect to the Workers Act, 1961 and reads as follows :

Section 37 : Effect of laws and agreement inconsistent with this Act : (1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in terms of any award, agreement or contract of service, whether made before or after the commencement of this Act."

The argument that the Kerala Act, 1960 was inconsistent with the Workers Act, 1961 was negated by the Kerala High Court. It was pointed out that the legislative power for both Acts was, no doubt, to be traced to Entries 23, 24 of List III of Schedule VIII of the Constitution of India. The Court gave two reasons for holding there was no repugnancy. Firstly there was no provision in the Workers Act, 1961 corresponding to S. 18 of the Kerala Act requiring notice before dismissal and providing appeal to an authority under the Act. S. 27(3) of the Workers Act was not comparable to S. 18 of the Kerala Act. Secondly, S. 2(h) of the Workers Act by its own force, clearly excluded a person covered by the Kerala Act, from the purview of the Workers Act and therefore there could be no repugnancy between the two Acts. The learned Judge observed (p. 501) :

"Besides, the definition of a Motor Transport Worker under S. 2(h) of the Central Act excludes inter alia 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. This, I should think, is sufficient indication that, far from there being any conflict or inconsistency between the two Acts, they had to be read in harmony with each other."

It was also observed (p. 501) :

"It was also pointed out by the counsel for the respondents that by reason of S. 1(4) of the Central Act, it applies only to an undertaking employing five or more motor transport workers and there is nothing to show that the petitioner's undertaking satisfied the requirement."

On the above reasoning, the employer's writ petition was dismissed. We are in entire agreement with the view of the Kerala High Court.

13. We respectfully dissent from a contrary view expressed by the Patna High Court in Bihar State Road Transport Corporation v. Orang Bahadur, (supra) and from the later Full Bench decision of the same High Court in Amarnath Singh Vs. Presiding Officer, Industrial Tribunal and Others, , wherein it was held that the Bihar Shops and Establishments Act, 1954 was a general Act repugnant to the Workers Act, 1961 which was a special Act, to the extent of the former's applicability to "motor transport workers". We are unable to accept the Patna view inasmuch as, in our opinion, under S. 1(4) of the Workers Act, 1961 not only the undertaking must be a "motor transport undertaking" but it must also employ "motor transport workers". If the workers governed by Shops and Establishments Act are expressly excluded from the definition of "motor transport workers" in S. 2(h) of the Workers Act, 1961, it cannot still be said that the Workers Act, 1961 will apply to a motor transport undertaking employing workers who are covered by the Shops and Establishments Act. It will amount to implying an inconsistency between the State Law and the Central law in spite of a deliberate provision in the Central law for avoiding such an inconsistency. The reasoning of the Patna High Court that if a repugnancy was not implied, the Workers Act, 1961 cannot possibly apply to any undertaking what-so-ever, does not, with great respect, appeal to us. In our view, the Workers Act would apply to all other undertakings employing workers covered by the main part of S. 2(h). The specific exclusion by Parliament of two types of workers from S. 2(h) shows that Parliament was of the view that such exclusion will not leave the main part of S. 2(h) otiose.

14. In S. K. Aggarwal v. The Asst. Inspector of Labour, (1972) 2 Andh LT 1, a learned single Judge of this Court was dealing with a transport company against whom a complaint was filed for not registering under S. 3 of A.P. Shops and Establishments Act, 1966. Granting a writ of prohibition the learned Judge referred to the judgments of the Kerala and Patna High Court and to the definition of "motor transport worker" in S. 2(h) and held that as the Workers Act, 1961 applied to the petitioner and S. 37 gave overriding effect, no registration under the A.P. Shops and Establishments Act, 1966 was necessary. We are of the view that this judgment is wrongly decided as it did not notice the twin conditions in S. 1(4) namely that the undertaking must be a "motor transport undertaking" and the workers must also be "motor transport workers". We therefore overrule the above decision.

15. Reliance is then placed for respondent on the decision of the Allahabad High Court in Star Paper Mills Ltd., v. State of U. P., (1973-I-LLJ-433) for the proposition that a worker will not come under the purview of the Shops and Establishments Act, unless he is physically working in the shop or establishment concerned. In that case, after holding that the paper-mills was a "private carrier" and therefore a "motor transport undertaking" under S. 2(g) of the Workers Act,

1961, the Allahabad High Court held that the transport workers were not actually working at the premises of Sahranpur but were working in the forest or road while collecting or transporting raw materials and where not covered by the U.P. Shops and Establishments Act, 1947 and therefore the Workers were not covered by the exclusion clause of S. 2(h) of the Workers Act, 1961. In our view, the above decision is clearly distinguishable inasmuch as S. 2(21) of the A.P. Shops & Establishments Act, 1966 (now S. 2 (21) of 1988 Act) includes in the definition of "shop" not merely an office, a store-room, godown or warehouse but any work place, whether in the same premises or otherwise, used in "connection" with such trade or business. Further under S. 2(8) (now also S. 2(8) of 1988 Act) an employee is a person who is wholly or principally employed in and in "connection" with any establishment and S. 2(10) (now also S. 2(10) of 1988 Act) includes a shop. In *Bayer (India) Ltd. v. Commissioner of Labour*, (1980) 1 APLJ (HC) 360 a Division Bench of this Court held that for purpose of S. 2(10) of the A.P. Act, a defined premises is not an essential prerequisite for an establishment to fall within the said definition of shop. Therefore the judgment of the Allahabad High Court cannot be held against the respondent. In our view, what is contemplated by Cl. (ii) of S. 2(h) of the Workers Act is that if a transport worker is governed by a law regulating the conditions of service of persons employed in shops or commercial establishments, that person shall not be deemed to be a motor transport worker within the meaning of S. 2(h) of the Workers Act and a person employing him need not get his undertaking registered under the Workers Act. Whether the employee works within shop premises or elsewhere is really irrelevant. The real object of this exclusionary clause seems to be to ensure that the additional benefits conferred by the Shops Act are not denied to the class of workers who fall within the scope of the Shops Act, even though they might also come within the fold of the Workers Act. Point No. 3 is held accordingly.

16. Point 4 : Coming to the facts of the case, we requested both sides to place before us details of any registration by the members of the petitioner-Association, under the A.P. Shops & Establishments Act, 1966 or 1988. In response thereto, learned counsel for the petitioners gave a list of 18 traders, the registration, number of vehicles which they are operating and the reference numbers of "licences" said to have been issued under the A.P. Shops and Establishments Act. However, the names of the persons employed for the purpose of running and maintaining motor vehicles have not been furnished. In the application form (Form AA) names of employees are required to be given. The "travelling staff" are also mentioned therein. A copy of the list of these 18 traders has been given to the learned Government Pleader and it is also annexed to this judgment. The learned Government Pleader represents that on a random check it is found that the shops are registered with the Labour Department. In conformity with the law laid down in our judgment, the following directions are issued :

(1) The Commissioner of Labour or any other competent subordinate authority

will issue notices to the 18 traders mentioned in the Annexure to furnish copies of the certificates of registration under the A.P. Shops & Establishments Act together with the details of the persons employed by them for the purpose of operating and maintaining the motor vehicles in connection with their trade or business;

(2) The concerned authority will verify -

(a) Whether the shop or establishment is registered under the A.P. Shops & Establishments Act and (b) Whether the persons employed for the purpose of operating and maintaining the motor vehicles are included in the certificate of registration. If the traders do not furnish the information within the stipulated time, it is open to the concerned authority to undertake necessary verification by itself.

(3) If it is found that the shop or establishment is not registered or that the employees connected with the motor vehicles are not included in the application form filed under the Shops and Establishments Rules, it is open to the concerned authority to enforce the provisions of the Motor Transport Workers Act against the trader concerned, till such times as they are covered by the A.P. Shops & Establishments Act.

(4) Till such verification is made, the respondents shall not apply the provisions of the Motor Transport Workers Act in respect of the 18 traders mentioned in the Annexure.

17. The writ petition is disposed of accordingly. No costs. Advocate fee Rs. 350/-.