
(1997) 08 PAT CK 0046
In the Patna High Court
Case No : C.W.J.C. No. 1191 of 1988 (R)

Anil Agrawal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Mines Act, 1952 — Section 2
Minimum Wages Act, 1948 — Section 2

Citation : (1997) 45 BLJR 1753 : (1998) 1 LLJ 539 : (1997) 2 PLJR 872

Hon'ble Judges : Choudhary S.N. Mishra, J

Bench : Single Bench

Advocate : Prakash Chandra, R.K. Marathia, for the Appellant; A.K. Trivedi, for the Respondent

Final Decision : Allowed

Judgement

Choudhary S.N. Mishra, J.—The short but interesting question which arises for adjudication in this writ application is as to whether the Stone Breaking and Crushing Plant belonging to the petitioner will come within the jurisdiction of the Central Government and/or State Government for the purpose of fixing and regulating the Wages of its Employees working with the plant, in question. The facts are not in dispute which are as follows:

2. The petitioner Anil Agrawal, who is the proprietor of M/s. Agrawal Minerals, Bar-ganda, P.O. Giridih, District Giridih (T), runs the Stone Breaking and Crushing Plant at Ma-heshmunda. The petitioner is also a lessee with respect to certain minor minerals (Stone Boulders) under the lease granted by the State of Bi-har which is situated in the district of Giridih. Labourers are separately engaged both in the Mines for extracting stone boulders as well as at his crusher plant at Maheshmunda and the wages of the employees working with the plant are being paid in terms of the notification issued by the State Government from time to time under the provisions of the Minimum Wages Act, 1948 (hereinafter referred to as the Act). The further case of the petitioner is that the Stone

Breaking and Crushing Plant of the petitioner is situated far away from the lease hold premises and the said plant is not being used for deposit-ing refuse from the mine and/or any operation in connection thereof is being carried on by the owner of the plant. The respondent No. 4, namely, the Labour Enforcement Officer (Central) issued a letter dated May 2, 1986 directing the petitioner to rectify the irregularities pointed out in the inspection report on the presumption that the stone crushing activities include mine in terms of Section 2(i)(j)(ix) of the Mines Act, 1952 as amended in 1979, a copy of the said letter is made Annexure-1 to this writ application. The respondent Regional Labour Commissioner (Central), therefore, issued a notice dated September 24, 1987 to the petitioner to show cause as to why the wages in terms of the provisions of the Act be not realised. A copy of the said notice is made Annexure- 3 to this suit application. Ultimately, a case under the Act was instituted against the petitioner for realisation of the wage under the Act. It may be mentioned here that prior to the institution of the case by the respondent, Regional Labour Commissioner (Central) a similar proceeding was initiated and is still pending before the authority of the State Government for realisation of the wages of the employees working with the plant in terms of the provisions of the Act.

3. In this case, no counter affidavit has been filed either on behalf of the State Respondents and/or the Central Government. Accordingly this writ application is being disposed of on the basis of the averments made therein.

4. Mr. Marathia, the learned counsel for the petitioner has challenged the notice and the letter issued by the Respondents No. 3 and 4 namely the Regional Labour Commissioner (Central) as well as Labour Enforcement Officer (Central) on the ground that the process of stone breaking and crushing is not being carried on within the premises of the Mining Area and/or adjacent thereto and as such it will not come within the jurisdiction of the Central Government. It is submitted that undoubtedly, the stone breaking and crushing plant comes within the provisions of the Minimum Wages Act, as it has been specifically mentioned in item No. 8 of the Schedule appended thereto. The question arises as to who is the appropriate authority for the purpose of implementing the provisions of the Act, Section 2(b) of the Act defines the appropriate government as follows :

"Section 2(b) of Minimum Wages Act:

"Appropriate Government" means (i) in relation to any scheduled employment carried on by or under the authority of the Central Government, or a railway administration, or in relation to a mine, oil field or major port, or any corporation established by a Central Act, the Central Government, and:

(ii) in relation to any other scheduled employment, the State Government, and:

5. It is admitted position that the stone breaking and crushing plant of the petitioner is situated far away from the Mining Area and the said plant is not being used for depositing refuse from the Mines and/or in, any way, such operation is carried on by the owner of the plant as has been admitted by

respondent authority in his inspection report dated February 27, 1988 as contained in Annexure-4/E to the writ petition. In opposition, Mr. Trivedi, however, has submitted that in the premises the Central Government is the appropriate authority for regulating the wages of the workers working in such plant. In support of his contention, he has referred to Section 2(j) of the Mines Act and its various clauses and submits that the plant, in question, will come within the mischief of Clauses "X" and "XI" of Section 2(j) of the Act. Section 2(j) of the Mines Act reads as follows :

"Section 2(j) : "Mine" means any execution where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes:

(i) all borings, bore holes, oil wells and accessory crude conditioning plants, including the pipe conveying mineral oil within the oil fields :

(ii) all shafts, in or adjacent and belonging to a mine, whether in the course of being sunk or not:

(iii) all levels and inclined planes in the course of being driven:

(iv) all open cast workings:

(v) all conveyors or serial ropeways provided for the bringing into or removal from a mine of minerals or other articles or for the removal of refuse therefrom:

(vi) all adits, levels, planes, machinery, works, railways, tramways, and sidings in or adjacent to and belonging to a mine:

(vii) all protective works being carried out in or adjacent to a mine:

(viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with the mine or a number of mines under the same management:

(ix) all power stations, transformer substations, converter stations, rectifier stations and accumulator storage stations for supplying electricity solely or mainly for the purpose of working the mine or a number of mines under the same management:

(x) any premises for the time being used for depositing refuse from a mine or in which any operations in connection with such sand, refuse or other material is being carried on, being premises exclusively occupied by the owner of the mine:

(xi) any premises in or adjacent to and belonging to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on.

6. According to Mr.Trivedi, the process of stone breaking and crushing plant will be deemed to be the mining activity and, as such, the appropriate Government is the Central Government. A similar controversy arose in the case of the State of

Maharashtra Vs. Mohanlal Devichand Shah, wherein the question has been answered in the following terms:

"Thus reading item 8 of the schedule and Section 2(b) of the Act together, it seems to us that the definition demarcates the jurisdiction of the Central Government and the State Governments in this way: If the employment in stone breaking or stone crushing is not in a quarry, it is the State Government that will have jurisdiction. We are unable to appreciate the observations of the High Court that the operation of stone breaking and stone crushing in a stone quarry does not fall within item 8 of the Schedule and that it is necessary that Parliament should amend item 8 of the Schedule."

7. Apex Court while interpreting Section 2(b) of the Act read with item 8 of the Schedule had clearly held that if the employment of stone breaking and crushing is not in a quarry, it will come within the jurisdiction of the State Government. As has been stated above, the process of stone breaking and crushing is not being carried on in the quarry rather far away from the quarry as has been admitted by the respondent authority in his inspection report. In that view of the matter, in my opinion, the appropriate Government is State Government in the instant case, and as such the respondent first set namely the Regional Labour Commissioner (Central) as well as the Labour Enforcement Officer (Central) have no jurisdiction either to issue such notice and/or to initiate any proceeding against the petitioner for realising the wages of the employees engaged for such activities.

8. Accordingly, the letter and the notice issued by the respondent as contained in Annexures-1 and 3 are hereby quashed. This writ application is accordingly allowed but without costs.