
(1992) 09 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition No. 7051 of 1984

Bagalkot Udyog Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 04-09-1992

Acts Referred:

Citation : (1992) ILR (Kar) 2966 : (1993) 4 KarLJ 7

Hon'ble Judges : M. Ramakrishna, J

Bench : Single Bench

Advocate : R. Gururajan, for the Appellant; D.V. Shylendra Kumar, Sr. Central Govt. Stdg., for the Respondent

Final Decision : Dismissed

Judgement

M. Ramakrishna, J

1. The petitioner is a factory engaged in the manufacture of cement. It is located at Bagalkot, Bijapur District. Limestone is one of the raw materials required for the manufacture of cement. To get the limestone, the petitioner factory has taken certain mining areas controlled by the respondents. In the mining area, a plant is put up for crushing the limestone which is thereafter sent to the factory for the manufacture of cement.

2. The second respondent issued a notice as per Annexure-B to the petitioner bringing to its notice that the plant installed by the petitioner was covered by the Mines Act. In response to the notice, the petitioner sent a letter as per Annexure-B by way of reply stating that the crushing plant was a factory covered by the Factories Act, 1948 (the Act for short) and that therefore it might be exempted from the application of the Mines Act. The request was rejected by the letter of respondent-2 written as per Annexure-C. The petitioner again wrote a letter as per Annexure-D relying upon the Decision of the Madhya Pradesh High Court in M/s BIRLA JUTE MANUFACTURING CO. LTD. v. THE STATE OF MADHYA PRADESH AND ORS. and requested for exemption. That was also rejected by the letter,

Annexure-E, Ultimately, the petitioner wrote one more letter on the same lines reiterating that the crushing plant could not be covered by the Mines Act, that the Mines Manager had no control over the factory and instead it was the Chief Engineer under the Factories Act who was empowered to control the factory and that therefore the factory might be exempted from the coverage of the Mines Act. Annexure-G is the letter written by respondent-3 once again rejecting the request of the petitioner. Hence this Petition.

3. The respondents have filed a detailed Statement of Objections denying the averments of the petitioner and contending, inter alia, that the Writ Petition is not maintainable as the petitioner has not specifically sought exemption under the Mines Act, that the nature of work of the labourers in the mines being most hazardous to health, their interests cannot be properly safeguarded under the Act as its provisions are not as much stringent as that of the Mines Act, that admittedly mines are controlled and regulated by the Mines Act only, that the limestone being obtained from the earth by the mining in the mine is a mineral coming within the definition of "minerals" as defined in Section 2(jj) and that therefore the plant of the petitioner installed in the mining area for the purpose of crushing limestone is covered by the Mines Act and not by the Factories Act as contended by the petitioner. It is further stated, if the Act is made applicable to the mining areas, it would lead to confusion and become practically difficult for the enforcing authorities to apply which of the Acts in times of emergency and by whom, in view of the two separate enforcing authorities under the two Acts operating in the same area. As stated earlier, the contention of the respondents is that if at all the petitioner wants exemption from the application of the Mines Act, he can do so thereunder itself which contained specific provisions for that purpose.

4. Sri R. Gururajan, learned Counsel for the petitioner, argued that for all purposes the plant of the petitioner installed in the mining area

* Birla Jute Manufacturing Co. Ltd. Vs. The State of Madhya Pradesh and Others, for the purpose of crushing limestone being sent to the factory for the manufacture of cement is factory as held by the Madhya Pradesh High Court in Birla Jute Manufacturing Company's case cited earlier and therefore naturally the Factories Act is applicable to the plant in question in which case exemption as prayed for by the petitioner has to be granted; but, however, it was not correct on the part of the respondents to reject the request of the petitioner in that behalf. Sri D.V. Shylendra Kumar, learned Central Government Standing Counsel, argued in support of the rejection of the request of the petitioner by the respondents. However, he submitted that it was for the petitioner even then to apply for exemption under the Mines Act in which event the authorities concerned would take it into consideration and pass appropriate orders.

5. Now the question that arises for my consideration in this Writ Petition is, whether the respondents were justified in rejecting the application of the petitioner for exemption from applying the provisions of the Mines Act to the

petitioner's plant installed in the mine in question.

6. Admittedly, the petitioner has taken a certain mining area on lease from the respondents for obtaining limestone and to cut it into pieces for being sent to the factory for the manufacture of cement, it has also installed a crushing plant on the said area. It is also not in dispute that the limestone is a mineral to be excavated from the earth by mining, digging, quarrying or by any other operation.

7. Keeping in view the admitted facts, we have to see how far the case of the petitioner that its plant in the mining area is a factory having fallen within the extended definition of "factory" as held by the Madhya Pradesh High Court in the case" cited above, can be upheld.

8. In order to appreciate the contentions urged for the petitioner, extraction of certain provisions in the Mines Act is necessary. Section 2(j) defines "mine" as follows:-

"(j) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes -

xxxxx

(iv) all open cast workings;

xxxxx

(x) unless exempted by the Central Government by notification in the official Gazette, any premises or part thereof, 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;

Section 2(jj) defines "minerals" as follows:-

"(jj) "minerals" means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicking, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum);"

The words "open cast working" means, according to Section 2(kk), a quarry that is to say, an excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, not being a shaft or an excavation which extends below superjacent ground.

9. The Preamble of the Mines Act reads:

"An Act to amend and consolidate the law relating to the regulation of labour and safety in mines."

10. The object behind the Preamble as can be seen from the Preamble and the Statement of Objects and Reasons leading to an amendment brought in the Act

is to regulate labour and safety of workers working in the mines. The relevant portion for the purpose of ascertaining whether the crushing plant of the petitioner and its workers come within the ambit of the Mines Act, as stated in the Statement of Objects and Reasons, is necessary to be quoted. It reads:

"At present workshops run by a mine for the maintenance of its machinery and plant in safe and efficient working order are subject to the Factories Act, 1948, which is administered by Provincial Governments. Workers in workshops such as fitters, blacksmiths, welders, electricians and others frequently work for a part of the shift underground and while so employed come within the scope of the Mines Act. It is inconvenient that the same personnel should be subject to two different Acts administered by two different authorities. It is now proposed to bring all personnel engaged solely on work relating to mines within the scope of the Mines Act"

11. From the foregoing provisions and the object sought to be achieved under the Act coupled with the nature of work undertaken by the petitioner at the plant, it is undoubtedly clear that it is a mine covered by the Mines Act, the requirements of which the petitioner has to comply with. To hold it as a factory as held by the Madhya Pradesh High Court in Birla Jute Manufacturing Company would defeat the very object of the Act. It was a case where electricity duty was levied at the enhanced rate of 12 paise per unit, instead of 3 paise per unit charged earlier, from September, 1978 for the electrical energy consumed in the limestone crushing units. While considering the question whether the levy of enhanced rate of electricity duty at that rate was justified having regard to clause (2) of the Table contained in Section 3 of the Madhya Pradesh Electricity Duty Act with reference to Clause (1) thereof, the Court held that the purpose behind Clause (2) in providing a low rate of duty is obviously to encourage industries which use raw materials for carrying on manufacturing business and hence enhanced rate of interest as contemplated in Clause (1) was not called for in the circumstances arising in that case. Such a situation has not arisen in this case. Here is a case where the crushing plant of the petitioner situated in the mining area is sought to be covered by the Mines Act in order to ensure regulation of labour and safety in mines which cannot be so effectively done under the Factories Act and moreover application of the two different Acts to the same area may lead to confusion to the authorities as to which of the Acts should be applied in times of emergency when there is more than one Act prevailing in the same area. In view of the above, I hold that the petitioner's crushing plant is covered by the Mines Act and the rejection of the petitioner's request by the letter impugned here at Annexure-G being just and proper cannot be interfered with. In the result, I make the following

ORDER

This Writ Petition fails and is dismissed. No costs. However, it is made clear that it is open to the petitioner to apply for exemption under the Mines Act which has specific provisions enabling the authorities to exempt the petitioner's crushing

plant from the operation of the Act in which event the authorities concerned will consider the request of the petitioner and pass an appropriate order.