

(1992) 08 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 511 of 1985

Bharat Chand Chaturvedi

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-08-1992

Acts Referred:

Madhya Pradesh Industrial Relations Act, 1960 — Section 1(3), 31, 61

Citation : (1993) 2 LLJ 412 : (1992) 2 MPJR 424 : (1993) 38 MPLJ 159 : (1993) MPLJ 159

Hon'ble Judges : M.V. Tamaskar, J; D.M. Dharmadhikari, J

Bench : Division Bench

Advocate : P.R. Bhave, for the Appellant; K.P. Moshra, Addl. A.G., for the Respondent

Judgement

D.M. Dharmadhikari, J.

This petition is directed against the order passed by the Member Judge, Industrial Court, Indore, whereby the Industrial Court refused to uphold the order passed by the Labour Court on the ground that the M.P. Public Health Engineering Department is not an industry covered by Item 16 of the Schedule to the M.P. Industrial Relations Act, 1960.

The facts leading to this case are as under: -The petitioner was employed in Shahpur Water Project. By order dated May 31, 1980, his services were terminated because of remaining absent between May 25, 1980 to May 30, 1980. The petitioner challenged the said order before the Labour Court u/s 31 read with Section 61 of the M.P. Industrial Relations Act, 1960. The Labour Court recorded the evidence and gave an award in his favour, holding that the provisions of M.P. Industrial Relations Act, 1960 apply to the establishments of the Public Health Engineering Department of the State Government. It was also held that the termination of the petitioner was not according to law. Termination of the petitioner amounted to illegal retrenchment and according to the Standing Orders, the petitioner was entitled to be taken back in service.

Against the order passed by the Labour Court, the Department filed a revision before the Industrial Court. The Industrial Court vide para 4 of the order upheld the finding recorded by the Labour Court that the termination of the services for absence between May 25, 1980 to May 30, 1980 did not amount to misconduct. However, the Industrial Court reversed the finding given by the Labour Court that the Public Health Engineering Department is covered by Entry 16 of the Schedule.

The only question that falls for consideration by this Court is whether the Public Health Engineering Department of the State is covered by Entry 16 of the Schedule to the Notification issued u/s 1(3) of the M.P. Industrial Relations Act, 1960.

Before construing the relevant Entry 16 of the Schedule to the Act, it would be necessary to examine the nature of the Legislation with its scheme and intent. The preamble of the Act reads as under:-

"An Act to regulate the relations of employees and employers in certain matters, to make provision for settlement of industrial disputes and to provide for certain other matters connected therewith.:"

Section 1 contains the provisions showing the extent and commencement of the Act and reads as under:-

"1. Short title, extent and commencement.-

(1) xxxxx

(2) xxxxx

(3) This Section and Section 112 shall come into force at once and the State Government may, by notification, bring all or any of the remaining provisions of this Act into force in respect of-

(a) any or all industries; or

(b) undertakings in any industry wherein the number of employees, on any day, during twelve months preceding or on the date of the notification or on any day thereafter was or is more than such number as may be specified in such notification."

The Notification issued u/s 1(3) of the Act reads as under: -

"(1) Notification regarding application of the Act - Vide Notification No. 9952-XVI, dated December 31, 1960 the State Government in exercise of the powers conferred by Sub-section (3) of Section 1 of the Madhya Pradesh Industrial Relations Act, 1960 (No. 27 of 1960), the State Government hereby direct that all the provisions of the said Act other than Section 112 thereof shall come into force on the December 31, 1960, in respect of undertaking in the industries specified in the Schedule below wherein the number of employees on any date during twelve months preceding or on the date of the Notification or any day thereafter was or is more than one hundred:

SCHEDULE

Textile including cotton, silk, artificial silk, staple fibre, jute and carpet.

Iron and Steel.

Electrical goods.

Sugar and its by-products including (i) the growing of sugarcane on farms belonging to or attached to concern engaged in the manufacture of sugar; and (ii) all agricultural and industrial operations connected with the growing of sugarcane or the said manufacture.

Rice Mills

Oil Mills

Potteries.

Cement.

Lime Industry

Electricity generation and distribution.

Printing Press.

Paper and Straw Board.

Asbestos Cement.

Shellac.

Public Motor Transport.

Engineering including manufacture of Motor Vehicle.

Flour Mills.

Biscuit and Confectionery.

Glass.

Starch.

Vegetable Oil.

Rubber

Ceramics including refractory goods, fire bricks, sanitary-wares, insulators, tiles, stonewares, pipe and furnace lining bricks.

Chemical and chemical products industry.

Non-metallic mineral product industry.

Aluminium Industry

Gelatine Industry.

Leather and tanneries, including leather products.

Fertilisers as specified in Item 18 of the First Schedule to the Industries (Development and Regulation) Act, (LXV of 1951).

Drugs and Pharmaceuticals specified in Item 22 of the First Schedule to the Industries (Development and Regulation) Act, 1951 (LXV of 1951).

Fermentation Industries as specified in Item No. 26 of the First Schedule to the Industries (Development and Regulation) Act, 1951 (LXV of 1951).

Manufacture of Dairy Products and its distribution."

It would thus be seen that the Act, which is a State Act, as expressed in its long title, is an Act regulating the relations of employees in certain matters, to make a provision for settlement of industrial dispute and to provide certain other matters connected therewith. It covers the same field which is covered by the Central Act. The subject matter of the two Acts (State as well as Central) fall under the concurrent list and as the State Act was assented to by the President, it displaced the application of the Central Act to the industries to which it (State Act) is applied by Notification u/s 1(3). As the Central Act applies to all industries, its displacement by the State Act in relation to a particular industry has to be shown by a clear specification of the industry concerned in the Notification issued under the State Act. In this background, the Notification u/s 1(3) of the State Act has to be construed in a limited sense. See SKMS, Rajnandgaon v. Hindustan Steel Ltd. 1973 MPLJ 269.

The scheme of the Act and Entry No. 16 "Potteries" and Entry No. 60 "Cement" came for consideration and interpreted by a Division Bench of this Court in the case of R.N. Mishra v. The Works Manager, Burn and Co. Ltd. 1966 I LU 622 and of Jamul Cement Works Vs. State Industrial Court and Others, In the case of Burn and Co. (supra), the following observations of this Court are relevant for deciding the controversy before us:-

"Now, the M.P. Industrial Disputes Act, 1960, which regulates the relations of employees in certain matters and makes provisions for settlement of industrial disputes and provides for certain other matters connected therewith, is not an Act dealing with a particular industry or an undertaking therein. It is not a technical enactment. It is a general statute regulating industrial relations in any or all industries or undertakings in any industry as may be notified. The Act being a general statute, the words used therein must be construed in their popular sense. Again, as the Act does not apply to all industries or undertakings therein but only to those which the Government may select for being governed by the Act the industries that may be specified in the Notification u/s 1(3) must be understood in a limited sense and not in a wider sense."

In the case of Jamul Cement (supra), the entry "Cement" of the Schedule was

construed in comparison to the entry "Engineering", which is for consideration before us, and it was observed thus:- Jamul Cement Works Vs. State Industrial Court and Others,

"There is in the Schedule to the Notification dated December 31, 1960 itself an indication to justify the view that the term "Cement" used therein cannot be given a wide connotation so as to include the constructional work of cement factory. In the Schedule, "asbestos cement" and "engineering" have been separately specified. If it had been intended that the manufacture of cement should be understood in a wide sense so as to include manufacture of every kind of cement and also the construction of a cement factory then the separate enumeration of "asbestos cement" and "engineering" which clearly includes construction work, becomes purposeless. In that case manufacture of asbestos cement would be included in the cement manufacturing industry and the constructional work of any factory in any industry would be included in the various industries specified in the schedule. The fact "engineering", which includes constructional work, is one of the industries specified in the Schedule to the Notification, does not, however, lead to the conclusion that the workers employed by the petitioner on the constructional work are employees in an industry to which the Act applies."

As has been held by the Division Bench in cases of Burn and Co. Ltd, (supra) and Jamul Cement (supra), the Act being a general statute and not a technical enactment, the words used in the Act have to be construed in their popular sense. The dictionary meaning of the word "engineering" is:

"the art or science of making practical application of the knowledge of pure science as physics, chemistry, etc. as in the construction of engines, bridges, buildings, mines, chemical plants and the like."

(See The Random House Dictionary of English Language)

The more elaborate popular meaning of the word "Engineering" is to be found in Chamber's Encyclopedia, Vol. V, New Revised Edition, in which the word has been explained as:-

"ENGINEERING, in its broader sense, is that branch of human endeavor by which the forces of nature are brought under human control and the properties of matter made useful in structures and machines."

See also the meaning of word "engineering" from Encyclopaedia Britannica, Vol. VI, page 860:-

"Engineering is the professional art of applying science to the optimum conversion of the resources of nature to benefit man. The words engine and ingenious are derived from the same Latin root ingenerate, meaning "to create". The early English verb engine meant "to contrive". Thus the engines of war were devices such as catapults, floating bridges and assault towers, their designer was the "engineer", or military engineer. His counterpart was the civil

engineer, who applied the same knowledge and skills to devising structures, streets, water supplies, sewage systems, and other projects of benefit to civilians.

Associated with engineering is a greater body of special knowledge, preparation for professional practice involves extensive training in the application of that knowledge. Standards of engineering practice are maintained through the efforts of professional societies, usually organised on a national or regional basis, with each member acknowledging a responsibility to the public over and above responsibility to his employer or to other members of his society."

See Corpus Juris Secundum, Vol. 30, page 705:-

"ENGINEERING. The art and science by which the mechanical properties of matter are made useful to man in structures and machines. More specifically "engineering" is the planning and constructing of roads, bridges, railroads, canals, aqueducts, machinery, and other similar works.

Engineering work : Any work of construction or alteration or repair of a railroad, harbour, dock, canal or sewer, any work of alteration of a railroad or of irrigation canals and laterals".

Understanding the meaning of the word "engineering" on the basis of the dictionaries and encyclopedia, which convey its popular meaning, we have to determine whether Public Health Engineering Department of the State is covered by the entry "engineering". In this case the Industrial Court had remanded the matter to the Labour Court for holding an enquiry into the nature of industry carried on in the Public Health Engineering Department where the petitioner was employed. From the evidence led by parties, it is not disputed that amongst one of its essential functions, the department is engaged in supply of water to public. For this purpose, the department sometimes builds dams, water reservoirs, dig wells and tube-wells and lay pipe- lines for supply and distribution of water. Whether the above activities undertaken by the Public Health Engineering Department make it an engineering industry? In the opinion of learned Member of the Industrial Court, the entry read in the context of other entries of the Schedule is relatable to such industries in which some manufacturing activity is carried on, resulting into production of goods. Prima facie, the expression "engineering" cannot be restricted to convey description of such industries engaged in manufacturing of engineering goods. It is true that in construing the entry, aid can be taken from the other entries in the Schedule.

In construing various entries in the Schedule to the Notification, it has to be kept in mind that they refer to a class of undertakings or industries to which the Act has been made applicable in terms of Section (3) of the Act. The entry "engineering", therefore, denotes the class of industries and undertakings therein engaged in activities of that description. As has been seen above, the entries have to be understood in a limited and popular sense to effectuate the intention of the Legislature, which is to make applicable the State Act by notifying certain industries and to displace the applicability of Central Act to such industries. With

the aid of the dictionaries and Encyclopaedia quoted above, the literal and popular meaning of the entry "Engineering" it is to be understood by addition of words in it as implied to read "Engineering structures and machines". It is unreasonable to restrict its meaning to only such engineering industries where some kind of manufacturing activity is carried on for production of goods.

The Learned Member of the Industrial Court in holding that the expression "engineering" would not include Public Health Engineering Department, appears to have been influenced mainly by consideration that the specification of industries or undertakings in various entries of the Schedule e.g. textile, iron and steel, electrical goods, sugar and its products, rice mills, oil mills, potteries, cement, lime and so on is with reference to the manufactured products in them and hence, the entry "engineering" has to be construed likewise.

This reasoning apparently seems sound; but on closer scrutiny of the Schedule would be found unreasonable. Entries, such as "electricity distribution" and "public motor transport", are such industries also to be found in the Schedule to denote industries where no manufacturing activities may be carried on.

To construe a particular entry, specifying a kind of industry with reference to other industries of the Schedule, is, therefore, not a reasonable way of construing a particular entry and construction, as placed by the Industrial Court on the relevant entry, defeats the purpose of Section 1(3) of the Act to bring in a particular type of industry engaged in manufacture of goods or in works of other nature within the fold I of the Act.

The second reasoning of the learned Member of the Industrial Court is that the expression "engineering" in association with the 2 words used in the said entry and other entries of the Schedule denotes industries engaged in manufacture of machines and is to be understood as "Yantra Udyog". We do not find any justification to restrict the meaning of expression "engineering" to only industries engaged in manufacture of machines. As has been explained above, on the basis of dictionary meaning of the expression "engineering", it includes all activities involving practical use of science in machines and structures. Industries engaged in civil engineering activities, such as, construction of buildings, dams, mines, bridges and other civil works prima facie seem to be covered by the expression "engineering". Public Health Engineering Department, whose essential function is to build reservoir, dams, canals, dig well for maintaining supply and distribution of water to the public, cannot be held to be excluded from the said entry "engineering".

It appears that the learned Member of the Industrial Court was misled by the use of expression "including manufacture of motor vehicles" which follow the term "engineering" in the said entry.

Generally the word "include" is used in order to enlarge the meaning of words or phrases occurring in the body of the statute. In other words, the word in respect of which "includes" is used bears both its extended statutory meaning and its

ordinary, popular and natural sense whenever that would be properly applicable. (See Maxwell on "The Interpretation of Statutes", Twelfth Edition at page 270). An interpretation clause, which extends the meaning of a word by use of word "includes", does not take away its ordinary meaning. "An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular and natural sense whenever that would be properly applicable, but to enable the word as used in the Act, when there is nothing in the context or the subject matter to the contrary, to be applied to something to which it would not ordinarily be applicable." Sometimes a term is defined in an interpretation clause merely *ex abundanti cautela* that is to say, to prevent the possibility of some incident or something relating to the term escaping notice. (See Craies on "Statutes Law", Seventh Edition, at pages 214 and 215). Thus, it would be seen that an interpretation clause, which extends the meaning of a word does not take away its ordinary meaning. The expression "including manufacture of motor vehicles" which follows the expression "engineering", does appear to be introduced by way of only abundant caution so that industries like automobile industries are not deemed to be excluded from the ambit of the expression "engineering".

Having held that the Public Health Engineering Department is an industry covered by the Notification, the question to be decided is whether the order of termination was illegal. Obviously for the absence from duty no enquiry was held, nor any retrenchment compensation was paid, even if, for the present, we may not construe whether under the rules any misconduct was committed, the finding recorded by the Labour Court is upheld and the finding of the Industrial Court holding that the department is not covered by the Notification is set aside.

Learned Advocate-General argued that the petitioner being Government servant, his remedy lay before the State Administrative Tribunal. This contention cannot be accepted since the Public Health Engineering Department of the State is also an industry as defined by the Act, the employee has an option to resort to any one of the remedies available to him under the Act or under the Administrative Tribunals Act, 1985.

In view of the discussion aforesaid, the order of the Industrial Court dated November 12, 1984 (Annexure-J) is hereby quashed. Consequently, the order of the Labour Court dated November 30, 1982 (Annexure-I) is restored and confirmed. The order of the Labour Court directing reinstatement with full back wages of the petitioner is hereby confirmed. The petitioner shall also get costs of this petition from the respondent-State. Counsel's fee Rs. 500/- if certified.