
(2008) 09 JH CK 0116
In the Jharkhand High Court

Bishop's School and Another	Vs	APPELLANT
State of Bihar (now Jharkhand) and Others		RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Factories Act, 1948 — Section 2, 85

Citation : (2008) 119 FLR 946 : (2009) 1 JCR 95 : (2009) 1 LLJ 693

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for issuance of an appropriate writ, order of direction in the nature of certiorari for quashing the notices dated 17/18.3.1998 and 28.4.3998, issued by respondent No. 2, Inspector of Factories, Circle No. 2, Doranda, Ranchi, whereby, he has summoned petitioner No. 2, namely, Richard Ian Thornton, Principal of Bishop's School, Old Hazaribagh Road, Ranchi as also the Father Z.A. Therom, the President of petitioner No. 1, and directed them to get the school registered under the provisions of Factories Act, 1948 and Bihar Factories Rules, 1950 and further to comply with various provisions of the said Act and Rules.

2. The main point raised by the petitioners for determination is as to whether the impugned notices are on the face of it illegal, arbitrary and vindictive. The petitioners have also alleged malafide against respondent No. 3, as according to them, he became inimical and annoyed because the request for admission of his daughter was not acceded to by the petitioners.

3. According to the petitioners, the notice for registration under the Factories Act was issued solely on the ground that a generator was there in the school, which was being used at the time of load-shedding and, thus, it was covered under the provisions of Factories Act.

4. The respondents in their counter affidavit have relied upon a notification

Issued u/s 85 of the Factories Act, which is quoted as under:

85. Power to apply the Act to certain premises.- (1) The State Government may by notification in the Official Gazette declare that all or any of the provisions of the Act shall apply to any place therein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on notwithstanding that:

(i) the number of persons employed therein is less than ten, if working with the aid of power and less than twenty if working without the aid of power, or

(ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner;

Provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

(2) After a place is so declared, it shall be deemed to be a factory for the purposes of this Act, and the owner shall be deemed to be the occupier and any person working therein, a worker.

Explanation.- For the purpose of this section, "owner" shall include a lessee or mortgagee with possession of the premises.

5. Section 85 is an enabling provision under which notification in Official Gazette can be issued for making applicable any of the provisions of the Act but the same applied to a place where manufacturing process is carried on with or without the aid of power, subject to other conditions that there should be at least ten employees etc. Thus, a notification u/s 85 is dependent upon two mandatory requirements, namely, it has to be in accordance with the provisions of the Act and secondly it can apply only to the place where manufacturing process is carried on.

6. The petitioners' contention is that the notification being S.O. No. 131, dated 24th January, 1985 u/s 85 of the Act is with regard to generation and conversion of electricity excluding transformation by the State transformers, as provided in Clause 7 of Schedule Y.

7. u/s 2(m) "factory" has been defined under the Factories Act, 1948 and the same is quoted as under:

2. Interpretation.

xxx xxx xxx

(m) "factory" means any premises including the precincts thereof:

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on. or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of [the Mines Act, 1952 (35 of 1952)]. or [a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place,

Explanation I. For computing the number of workers for the purposes of this clause all the workers in [different groups and relays] in a day shall be taken into account;

Explanation II. For the purposes of this clause, the mere fact that an Electronic Data Processing Unit or a computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.

8. This is an inclusive definition. However, the premises as per the statutory requirement u/s 2(m) will include only a premise where manufacturing process is being carried on with the aid of power. Further, manufacturing process has been defined u/s 2(k) of the Factories Act, 1948 and the same is quoted as under:

2(k) "manufacturing process" means any process for:

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance, or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels, or

(vi) preserving or storing any article in cold storage,

9. This definition by no stretch of imagination will include the school. Even as per the definition of worker", as provided u/s 2(f), a worker means a person employed in any manufacturing process and not otherwise.

10. On reading the aforesaid statutory provisions it is clear that the sine qua non for invoking the provisions of the Factories Act for the purposes of registration presupposes that the premises, in question, runs a manufacturing unit or process and unless the premise is used for manufacturing process the provisions of the Factories Act will not apply. It has also been contended by the learned Counsel for the petitioners that their school has been singled out as none of the schools has been asked to get itself registered under the Factories Act and, thus, the impugned action of the respondents is discriminatory and motivated, apart from

being arbitrary and illegal.

11. It is well settled that the notification so issued u/s 85 of the Factories Act cannot expand the scope of the main statutory provision under which it has been notified, otherwise it will be rendered illegal and devoid of any authority and jurisdiction. In any case, the notification has to be in consonance with the provisions of the main statute. A school cannot be said to be involved in a manufacturing process to be covered under the definition of factory as provided u/s 2(m) of the Factories Act.

12. In the aforesaid background, this writ petition is allowed and the impugned notices dated 17/18.3.1998 and 24.4.1998, issued by respondent No. 3, are, accordingly, quashed. However, there will be no order as to costs.