
(1980) 06 BOM CK 0007
In the Bombay High Court
Case No : Spl. C.A. No. 4118 of 1976

B.N. Sarda (Pvt.) Ltd.

APPELLANT

Vs

Kisan K. Borade

RESPONDENT

Date of Decision : 19-06-1980

Acts Referred:

Beedi and Cigar Workers (Conditions of Employment) Act, 1966 — Section 2(f)
Bombay Shops and Establishments Act, 1948 — Section 28
Payment of Gratuity Act, 1972 — Section 1(3)

Citation : (1980) 41 FLR 168 : (1981) 1 LLJ 190 : (1980) MhLj 721

Hon'ble Judges : R.S. Bonsale, J;M.N. Chandurkar, J

Bench : Division Bench

Judgement

Chandurkar, J.—The petitioner is a private limited company carrying on a business of manufacture of bidis. At one of the centres where the manufacture of bidis was undertaken by the petitioner and which was situated at village called Manegaon in Taluka Sinnar, District Nasik, the respondent was admittedly working as a labourer till he voluntarily resigned on 27th December, 1972. Claiming that he had put in service of 20 years, the respondent-employee claimed a gratuity of Rs. 1,200 under the provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Gratuity Act"). For the purposes of this petition we are not concerned with the several defences raised as to the maintainability of the application made by the employee before the controlling authority under the Gratuity Act, namely, the Judge of the Third Labour Court at Bombay. The only contention material for the purpose of the present petition was whether the provisions of the Gratuity Act were applicable in the case of the respondent-employee.

2. The contention of the petitioner was that the employee was not employed in any factory or shop or establishment and since it is only in respect of person employed in a factory or shop or establishment that the Gratuity Act is applicable under cls. (a) and (b) of sub-s. (3) of S. 1 of the Gratuity Act, the claim of the employee could not be granted. With regard to the contention that the

respondent was not employed in a shop or establishment, the contention was that the law in relation to shops and establishments for the time being in force in a State referred to in cl. (b) of S. 1(3) of the Gratuity Act has to be a Central law and not a State law. Alternatively, the contention was that the Bombay Shops and Establishments Act, 1948 which the law in relation to shops and establishments for the time being in force in the State was not applicable to the establishment in which the employee worked because the establishment was not situated in any local area specified in Schedule I to the Bombay Shops and Establishments, Act 1948.

3. The controlling authority held that the establishment in which the employee worked was a factory and that in any case he was an employee within the meaning of S. 2(f) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 because even the worker preparing bidis at home with raw material of the employer is an employee within the meaning of Beedi and Cigar Workers (Conditions of Employment) Act, 1966. Thus the Controlling Authority held that the employee was entitled to gratuity. With regard to the quantum of gratuity payable, the controlling authority found that the respondent was entitled to receive Rs. 1,140.

4. In the appeal filed before the appellate authority by the petitioner, the appellate authority held that the petitioner's concern was a factory as defined by the Factories Act and, therefore, the provisions of the Gratuity Act would be applicable in the case of the respondent. Alternatively, the appellate authority held that the provisions of the Gratuity Act would be attracted in the case of the employee in view of the provisions of S. 1(3)(b) of the Gratuity Act, because the petitioner's concern was an establishment within the meaning of the Beedi and cigar Workers (Conditions of Employment) Act, 1966. Holding that the quantum of gratuity was correctly determined by the controlling authority, the appellate authority dismissed the petitioner's appeal.

5. The only question which is now raised before us on behalf of the petitioner is that the employee was not working in any factory and even if it is assumed that the establishment in which the employee worked was an establishment, it was not an establishment within the meaning of any Central enactment. Mr. Rane contended that S. 1(3)(b) refers to "every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State." According to the counsel for the petitioner the law contemplated by S. 1(3)(b) is a Central law and not a State enactment. The argument advanced is that even if the law contemplated was a State enactment, the Bombay Shops and Establishments Act, 1948, could not govern the establishment in which the employee was working because the place where the establishment was situated did not fall within the local area specified in Schedule I to that Act.

6. It is not necessary for us to decide for the purposes of this petition whether the establishment situated in the village where the employee was employed in

the manufacture of bidis was a factory or not, because we are inclined to take the view that in any case of establishment of the petitioner is expressly covered by cl. (b) of S. 1(3) of the Gratuity Act. Under S. 1(3)(b) the Gratuity Act is made applicable to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more person are employed, or were employed, on any day of the preceding twelve months." The first question which has been argued before us is whether the law referred to in this clause is a Central enactment or a State law.

7. Now when cl. (b) of S. 1(3) of the Gratuity Act refers to "any law for the time being in force." there is no justification whatsoever to qualify those words by introducing a qualification that the law should be either a Central law or a State law. A State enactment is as much a law for the time being in force at a much a law for the time being in force at a given point of time as a Central enactment. It will, therefore, be enough for the purposes of cl. (b) of S. 1(3) of the Gratuity Act that there is a law in force in the State in relation to shops and establishments and it is immaterial whether the law is a State Law or a Central Law. If the employee concerned is working in a shop or an establishment within the meaning of any law, whether it is a State law or Central law, the provisions of the Gratuity Act will be applicable in the case of employees in that establishment if the employee falls within the definition in S. 2(e) of the Gratuity Act.

8. Now it is no doubt true that the Bombay Shops and Establishment Act, 1948, is primarily a law relating to the shops and establishments in the State of Maharashtra and it is also true that to the establishment in question that law does not apply because the establishment is not situated in any local area in which that Act is made applicable.

9. There is, however, another law operative in the State which also deals with the establishment in question. That law which is enacted by the Parliament is the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. It is a law which is intended to provide for the welfare of the workers in beedi and cigar establishments and to regulate the conditions of their work and for matters connected therewith and it also deals with the establishment where the manufacture of bidis is carried on as in the present case. Under that Act an employee is defined as "a person employed directly or through any agency, whether for wages or not, in any establishment to do any work, skilled, unskilled, manual or clerical." We are not concerned with the inclusive part of the definition. Then under S. 2(h) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, the word "Establishment" has been defined as follows :

"establishment means any place or premises including the precincts thereof in which or in any part of which any manufacturing process connected with the making of beedi or cigar or both is being, or is ordinarily, carried on and includes an industrial premises."

The various provisions of the Beedi and Cigar Workers Act will show that

provisions are made in the Act with regard to conditions of employment of an employee in the establishment defined under the Act, e.g., in S. 26 it is provided that every employee in an establishment shall be allowed in a calendar year leave with wages and the extent of the leave is specified. In such case provisions are made for wages during the leave period. The provisions of the Payment of Wages Act are made applicable to the establishment referred to in the Beedi and Cigar Workers Act. Section 28 of that Act reads as follows :

"Notwithstanding anything contained in the payment of Wages Act, 1936 (hereinafter referred to in this section as the said Act), the State Government may, by notification in the Official Gazette, direct that all or any of the provisions of the said Act or the rules made thereunder shall apply to all or any class of employees in establishment or class of establishment to which this Act applies and on such application of the provisions of the said Act, an Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of the enforcement of such provisions of the said Act within the local limits of his jurisdiction."

Section 31 deals with a notice of dismissal necessary to be given to an employee employed in an establishment governed by the said Act. The provisions of the Act will thus show that it is positively a legislation in relation to a particular kind of establishment where the workers are engaged in the manufacture of bidis and cigars and it is in our view, clearly a law in relation to an establishment as contemplated by the provisions of S. 3(b) of the Gratuity Act. The Gratuity Act is a beneficial legislation and, therefore, liberal construction must be given to the provisions in such legislation. We have, therefore, no doubt that the establishment where the employee was working in the village was clearly an establishment under the provisions of the Beedi and Cigar Workers Act and consequently by virtue of the provisions of S. 1(3)(b), the provisions of Gratuity Act would be attracted.

10. The scope of S. 1(3)(b), of Gratuity Act has recently been considered by the Supreme Court in the State of Punjab Vs. Labour Court Jullunder and Others, The Supreme Court has in that case pointed out that S. 1(3)(b) applies to every establishment within the meaning of any law for the time being in force in relation to an establishment in a State and that such an establishment would include an industrial establishment within the meaning of S. 2(ii)(g) of the Payment of Wages Act. We have, therefore, no doubt that both the appellate authority and the competent authority were justified in taking the view that the respondent-employee was entitled to claim gratuity from the petitioner.

11. The petition must fail and is, therefore, dismissed. Rule discharged with costs.