

(1978) 11 MAD CK 0040
In the Madras High Court

Cheran Transport Corporation Limited	APPELLANT
Vs	
Addl. Commissioner for Workmen's Compensation and Another	RESPONDENT

Date of Decision : 16-11-1978

Acts Referred:

MOTOR TRANSPORT WORKERS ACT, 1961 — Section 1, 10, 11, 12, 2

Citation : (1979) ILR (Mad) 320 : (1979) 1 LLJ 233

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Judgement

Natarajan, J.—The interesting question falling for consideration in this petition is whether a motor transport worker as defined in Section 2(3)(h) of the Motor Transport Workers Act, 1961 (hereinafter referred to as the Central Act) is entitled to invoke the provisions of the Madras Shops and Establishments Act, 1947 (hereinafter referred to as the State Act) and prefer an appeal u/s 41(2) of the State Act to the Additional Commissioner for Workman's Compensation against an order of dismissal passed against him by his employer. The petitioner, which is a motor transport undertaking, contends that such an appeal cannot be filed and seeks a writ of certiorari or other appropriate writ or direction to quash the order of the first respondent herein holding that he is competent to hear the appeal preferred by the motor transport worker u/s 41(2) of the State Act.

2. The second respondent herein was employed as a conductor in the transport undertaking of the petitioner. Certain charges of misconduct were framed against him and after enquiry, the petitioner found him guilty of the charges and dismissed him from service. Thereupon the second respondent preferred an appeal to the first respondent in terms of Section 41(2) of the State Act. The petitioner raised two preliminary objections touching the maintainability of the appeal, the first being that it was an industrial establishment governed by the Factories Act, 1948 and the Central Act and, therefore, it does not come under the purview of Section 2(3) and 2(6) of the State Act; secondly, the second

respondent was a motor transport worker as defined in Section 2(3)(h) of the Central Act, and therefore, an appeal u/s 41(2) of the State Act cannot be entertained. The first respondent, following *Anamalais Bus Transport Private Ltd., Chalakudi Vs. D. Ramakrishna Pillai and Another*, , overruled the preliminary objections and held that there was no repugnancy between the Central Act and the State Act and, therefore, the second respondent is entitled to prefer an appeal under the State Act against the order of his dismissal.

3. Notice of this petition has been duly served on the second respondent, but he has not entered appearance. On behalf of the first respondent, no counter has been filed, but the learned Government Pleader stated that if the files are necessary, the State is prepared to produce them for scrutiny by the Court.

4. Mr. M.R. Narayanaswami, learned Counsel for the petitioner, in the course of his submissions, stated that the view taken by the first respondent is clearly unsustainable and the ratio laid down in *Anamalais Bus Transport Private Ltd., Chalakudi Vs. D. Ramakrishna Pillai and Another*, , even if it be taken as a correct pronouncement, cannot throw any light on the controversy on hand, because the "arguments advanced in that case proceeded on different lines and not on the lines taken by the petitioner before the first respondent. The further argument of Mr. Narayanaswami is that *Amarnath Singh Vs. Presiding Officer, Industrial Tribunal and Others*, , which was decided by a Full Bench of the Patna High Court, represents the correct position of law and it is the ratio in that case that must be applied to the case between the parties. Before dealing with the arguments of Mr. Narayanaswami, it is necessary to refer to some of the provisions of the Central Act.

5. The Central Act came into force on 20th May, 1961 and it has been enacted "to provide for the welfare of motor transport workers and to regulate the conditions of their work". The statement of objects and reasons published by Government for making the enactment is to the following effect:

There are at present certain enactments like the Motor Vehicles Act, 1939, and the Factories Act, 1948, which cover certain sections of motor transport workers and certain aspects of their conditions of employment. There is, however, no independent legislation applicable to motor transport workers as a whole or for regulating the various aspects of their conditions of employment, work and wages. It is considered desirable to have a separate legislative measure for motor transport workers which would cover matters like medical facilities, welfare facilities, hours of work, spread-over, rest periods, over-time, annual leave with pay, etc., on an analogy of similar enactments for workers in factories, mines and plantations.

The definition of "motor transport undertaking" and "motor transport workers" occurring in Section 2(3)(g) and (h) of the Act requires careful examination and hence they are extracted below:

Section 2(3)(g):

"Motor transport undertaking" means a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward, and includes a private carrier.

Section 2(3)(h):

"Motor transport worker" means a person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot clerk, time-keeper, watchman or attend-ant, but except in Section 8 does not include--

(i) any such person who is employed in a factory as defined in the Factories Act, 1948 (63 of 1948);

(ii) any such person to whom the pro-visions of any law for the time being in force regulating the conditions of service of persons employed in shops or commercial establishments apply.

Among other provisions contained in the Act, there is provision for canteen (Section 8) rest rooms (Section 9), uniforms (Section 10), medical facilities (Section 11) and first-aid facilities (Section 12). These are dealt with in Chapter IV, under heading, "Welfare and Health". In Chapter V dealing with hours and limitations of employment, matters relating to hours of work, daily intervals for rent, spreadover, split duty, notice of hours of work, weekly rest, compensatory day of rest, etc., have been dealt with. Chapter VI deals with employment of young persons and Chapter VII deals with wages and leave. Chapter VIII deals with penalties and procedure. Chapter IX contains miscellaneous provisions and one such provision is Section 37. As per this section, the provisions of the Act are to have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any award, agreement or contract of service, whether made before or after the commencement of the Act. There is a proviso to the section which guarantees continuity of benefits to a motor transport worker under any award, agreement or contract of service if the terms therein are more favourable to the worker.

6. Looking at some of these provisions more closely, we find that the definition of a "motor transport worker" is of a two-fold character. In the earlier portion it is an inclusive definition, but in the later portion it is exclusive in character. The exclusive portion of the definition says that except in Section 8, which deals with canteens, any employee in a factory as defined in the Factories Act and any person to whom any law for regulating conditions of service of employees in shops or commercial establishments will not be a motor transport worker. In view of this categories exclusion by Parliament, it has been taken that a motor transport worker cannot invoke to his aid the provisions contained: in the State Act, The Central Act has to: be taken as an exclusive and comprehensive

enactment in so far as the motor transport workers are concerned. However, a learned Judge of the Kerala High Court has held in *Anamalais Bus Transport Private Ltd., Chalakudi Vs. D. Ramakrishna Pillai and Another*, : that a motor transport worker can take advantage of some of the provisions contained in the Kerala Shops and Commercial Establishments Act since there was no repugnancy between the Kerala Act and the Central Act. On going through the judgment, I find that the approach by the learned Judge has been made from an entirely different angle. Taking it for granted that the Kerala Shops and Commercial Establishments Act as well as the Central Act are identical legislations and run on parallel lines, the learned Judge has placed the two enactments side by side and made an examination to find out whether the provisions in the Kerala State Act are repugnant to the provisions of the Central Act. With due respect to the learned Judge, it appears to me that such a comparative study has been made on the assumption that both the legislations are identical in scope and character and as such, they are available for comparison and contract. It appears to me that there is no scope at all for a comparative study being made of the two enactments because the two legislations are on different planes and operate in different fields. The Central Act has been enacted solely and exclusively to deal with the case of motor transport workers, whereas the State Act is general in character and would apply to all classes of persons employed in shops, commercial establishments, restaurants, theatres and other establishments. Such being the case, the well known rule that the special excludes the general must be applied and in that view, it must be held that the Central Act excludes the applicability of the State Act to motor transport workers. Having regard to the expressions contained in the Central Act, it must be treated as an exhaustive and exclusive enactment and, once that conclusion is reached, then there is no scope at all for the provisions of that Act being compared with the provisions of the State Act in order to find out whether there is any repugnancy in the terms of the two enactments. As a matter of fact, the following passage occurring in *Anamalais Bus Transport Private Ltd., Chalakudi Vs. D. Ramakrishna Pillai and Another*, , itself lends support to the view taken by me:

The Supreme Court also cited with approval the following principle stated by Dixon, J. in *ex parte Mclean* 1930 43 Com.L.R. 472 ;

"If it appeared that the Federal Law was intended to be supplementary to or accumulative upon State law, then no inconsistency would be exhibited in imposing the same duties or in inflicting different penalties. The inconsistency does not lie in the mere co-existence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount Legislature to express by its enactment, completely, exhaustively, or exclusively, what shall be the law governing the particular conduct or matter to which its attention is directed. When a Federal statute discloses such an intention, it is inconsistent with it for the law of a State to govern the same conduct or matter".

7. As pointed out by Mr. Narayanaswamy, I think the ratio laid down in *Amarnath*

Singh Vs. Presiding Officer, Industrial Tribunal and Others, , should have been followed by the first respondent with reference to the preliminary objections raised by the petitioner. This Full Bench which decided that case approved an earlier decision of that Court and hold that even if the expression " motor transport undertaking" be a commercial establishment, the Legislature certainly intended to keep such a commercial establishment out of the purview of the expression "commercial establishment" as it is provided in exception to Section 2(h) of the Motor Transport Workers Act and if the Act applied to a motor transport undertaking, interpretation has to be put upon a motor transport worker in Section 2(h), which will be in harmony with Section 1(4) and Section 2(g) of the Central Act. I am in respectful agreement with the view taken in the abovesaid case. I, therefore, hold that the second respondent was not entitled to invoke Section 41(2) of the State Act and file an appeal to the first respondent against the order of dismissal. No doubt, it may be stated that by the exclusion of the State Act and its provisions, the second respondent will be left without a right of appeal. But, the second respondent is not left entirely without remedy because he can raise an industrial dispute, if so advised, against the order of dismissal. Even if such a remedy is not available to him, the Courts cannot substitute the absence of a provision in the Central Enactment by having recourse to the State Act when the State Act has been clearly excluded from application by the Central Act.

8. For the aforesaid reasons, the petition will stand allowed and the rule nisi will be made absolute. However, there will be no order as to costs.