

(1995) 06 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No's. 1643 and 1644 of 1991

Chief General Manager, Telecom Factory and another

APPELLANT

Vs

Karlekar S. S. (Smt.) and others

RESPONDENT

Date of Decision : 26-06-1995

Acts Referred:

Bombay Shops and Establishments Act, 1948 — Section 70
Factories Act, 1948 — Section 2(1), 59

Citation : (1997) 3 LLJ 1145

Hon'ble Judges : B.N. Srikrishna, J

Bench : Single Bench

Advocate : V.A. Gangal, Avd, for the Appellant; Ms. Radha D'souza, for the Respondent

Judgement

1. These writ petitions under Articles 226 and 227 of the Constitution of India impugn an order dated July 11, 1990 made in Applications Nos. LC 2/768 to 886 of 1989 and an order dated August 6, 1990 made in Applications Nos. LC-2/1003 to 1019 and 2201 to 2203 of 1989 by the Central Government Labour Court No. 2, Bombay, u/s 33-C (2) of the Industrial Disputes Act, 1947. Since both the writ petitions raise identical issues as to facts and law, they can be conveniently disposed of by a common judgment and order.

2. The Petitioners in both writ petitions are the Chief General Manager of the Telecom Factory at Deonar, Bombay, and the Union of India. The Respondents are the workmen employed in the Telecom Factory.

3. The Telecom Factory at Deonar is registered under the Factories Act. It is stated that there are two buildings in the Deonar factory - one in which the manufacturing activity on shop floor is carried out and another in which the clerical and administrative work is carried out. Both buildings are located within the premises covered by the Factory Licence in respect of the factories which is registered under the provisions of the Factories Act, 1948. In the present writ petitions we are concerned with the workmen styled by the Petitioners as "non-

industrial workmen".

4. There is an Arbitration Award dated April 20, 1981, under the Chairmanship of Justice Jaswant Singh, in which the working hours of different categories of employees working in Telecom Factory have been settled. Undoubtedly, for the purpose of working hours, the Petitioner Employer made a distinction between the workmen working in the factory on the shop floor, and other workmen whom they styled as "non-industrial workmen". While the workmen working on to the shop floor were required to work 8 hours per day, or 40 hours in a week, the "non-industrial workmen" were required to work from 10.45 A. M. to 6.00 P.M (including half-hour's break for lunch) every day from Monday to Friday and from 10.45 A.M. to 2.30 P.M. (without break for lunch) on Saturday, making a total of 37 1/2 hours per week. From the booklet containing the Arbitration Award it appears that the staff required to observe 37 1/2 hours a week comprise : (1) Establishment Section, (2) OS Section, (3) Stationary Section, (4) Purchase Section, (5) Wages, (6) Budget Section, (7) Telecom Accounts, (8) Costing, (9) Incentive, (10) Comptist, (11) Pension, (12) Ledger (13) Cash Section and (14) Pre-check. However, with effect from November 20, 1986, the working hours of such "non-industrial" workmen were changed to 40 hours per week, spread over five days, from Monday to Friday. In respect of these workmen, the stand of the Petitioners has been that they are all governed by the Fundamental and Supplementary Rules, Central Civil Services (Classifications, Control and Appeal) Rules, 1965, and not by the Factories Act, even for the purpose of payment of over-time. These workmen were, therefore, paid over-time payment only at single rate, irrespective of whether over-time exceeded their weekly hours, upto 48 hours, or even beyond 48 hours.

5. Non-industrial workmen of the Telecom Factory have agitated this question of payment of over-time at single rate, by filing applications u/s 33-C (2) of the Act before the Central Government Labour Court. Those applications were Application Nos. LC - 2/367 to 441, LC - 2/442 to 518 and LC - 2-571 of 574 of 1985. These and several other applications of similar nature were allowed by the orders of the Central Government Labour Court dated July 31, 1982, November 24, 1983, October 30, 1985, 41 November 5, 1985, August 4, 1988, August 16, 1988, August 17, 1988, October 10, 1988 and September 9, 1988. The order of the Labour Court in Application Nos. LC - 2/60 to 155 of 1988 was challenged before this Court in Writ Petition No. 5074 of 1988, which was summarily rejected at admission stage on November 3, 1988. The matter was not carried further thereafter by the Petitioners and one would have thought that the controversy had become final. However, to the chagrin of the present Respondent workmen, they were again denied the benefit of Section 59 of the Factories Act by resurrecting the old controversy that they are not "workmen" within the meaning of Arbitration Award and that they are only governed under the orders issued periodically by the Government and the provisions of the Civil Service Regulations.

6. Three groups of applications, Applications Nos. LC - 2/1003 to 1019 of 1989, LC - 2/2201 to 2203 of 1989 and LC - 2/768 to 886 of 1989, were filed before the Central Government Labour Court No. 2 at Bombay by the concerned Respondent workmen claiming that they were entitled to the benefit of Section 59 of the Factories Act and they sought a direction that the Petitioners be directed to pay them in accordance with the provisions of Section 59 of the Factories Act, 1948.

7. Before the Labour Court, the Respondent workmen pleaded that they were working in the Telecom Factory registered under the Factories Act, that the provisions of Section 59 of the Factories Act, 1948 were applicable to them as they were covered under the provisions of the Factories Act, that several such applications had been allowed by the Labour Court and, at least in one judgment of this Court, this Court had summarily rejected the challenge of such order. They also produced a copy of a certificate issued to the workmen who were paid over time. The proforma of the certificate, after giving details of the name and designation of the staff, particulars of pay and allowances, date on which over time was performed, prescribed hours of work, actual hours of work on the day, over time hours admissible on the day, certified as follows :-

"CERTIFICATE :

1. Certified that the officials who have performed overtime as detailed above were required under specific orders of competent authority to sit late in the office after having put in work during prescribed hours and to attend office on Sunday/ Holiday for urgent work.

2. Certified that the officials concerned did not receive any other remuneration/ conveyance charges compensatory leave for the performance of that over time work.

3. Certified that the weekly working hrs. in Col. No. 10 above are correct and applied to officials mentioned above.

4. Certified that the nature of duties of the non-industrial staff is such that their presence is necessary for the efficient working of the industrial staff."

8. The Petitioners while traversing the averments in the applications merely contended that there was distinction between the "industrial" and "non-industrial" staff and that the concerned Respondent workmen were governed by the Fundamental Rules and Supplementary Rules and Central Civil Services (Classifications, Control and Appeal) Rules, 1965 and not by Factories Act. They also claimed that, whenever the concerned workmen had put in work in excess of normal working hours plus one hour thereafter, they had been paid at single rates as prescribed under the Departmental Orders. The Petitioners contended that the concerned workmen, borne on the Administrative, Accounts and allied sections of the Telecom Factory, were governed by the Service Rules referred above and the Government Orders issued from time to time on the question of

payment of over time allowance. The Petitioners also contended that, though the Telecom Factory is a factory registered under the Factories Act, 1948, the Respondent workmen being on the Administrative/Accounts sections and not on the shop floor of the factory, they could not invoke the provisions of Section 59 of the Factories Act. that since the Respondent workmen were not workers under the Factories Act, they could not claim over time allowance at the rate payable to a worker u/s 59 of the Factories Act. Petitioners then relied on an amendment carried out to Section 70 of the Bombay Shops and Establishments Act in the year 1986 and contended that, by virtue of the said amendment, the Respondent workmen would not be entitled to over time payment under. the provisions of Section 59 of the Factories Act. Apart from the pleadings, no further evidence was led by both sides before the Labour Court.

9. Upon these pleadings, the Labour Court concluded that the Respondent workmen were "workers" within the meaning of Factories Act. 1948, that they were entitled to claim over-time wages at double the ordinary rate for the relevant period. Being aggrieved thereby, the Petitioners are before this Court to challenge the orders made in the three groups of applications by the Central Government Labour Court.

10. Writ Petition No. 1643 of 1991 is directed against the order made in Application Nos. LC-2/1003 to 1019 of 1989 and Application Nos. LC-2/2201 to 2203 of 1989, while Writ Petition No. 1644 of 1991 is directed against the order made in Application Nos. LC-2/768 to 886 of 1989.

11. At the out set, Mr. Gangal, learned Advocate for the Petitioners, invited my attention to an order of the Supreme Court dated July 8, 1991 in SLP No. 866 of 1992 (against the judgment and order of this Court in writ Petition 3846 of 1983) and contended that, by virtue of the view expressed in this judgment, the controversy was concluded and it could not be held that the Respondent workmen were entitled to over time payment even though in the past they had succeeded in their applications before the labour Court and also before this Court. I shall deal this order a little later, after narrowing down the controversy in the present writ petitions.

12. Mr. Gangal, learned Advocate for the Petitioners, high-lighted the distinction made between the "industrial" and "non-industrial" staff in the Jaswant Singh Arbitration Award and reiterated the contentions raised in the written statement filed by the Petitioners before the Labour Court .

13. Two queries were put by me to Mr. Gangal : (1) whether there was any establishment in Deonar registered under the provisions of the Bombay Shops and Establishments Act, 1948 ? and (2) Whether the Petitioners denied that the work carried out by the "non-industrial workmen" working in the concerned 14 sections of the Factory, was in connection with the manufacturing work in the Telecom Factory ? Mr. Gangal fairly conceded that there was no establishment of the Telecom Factory registered under the provisions of the Bombay Shops and

Establishments Act, 1948 and also that the work done by all the present Respondent workmen was only in connection with the manufacturing work carried on in the Telecom Factory.

14. Once the above position is admitted, in my view, the amendment to Section 70 of the Bombay Shops and Establishments Act makes no difference whatsoever to the situation. Doubtless, the Supreme Court expressed its view in passing the order in SLP No. 866 of 1992 and said,

"The controversy is as to the entitlement of the respondents for what is called over time wages for the work done beyond 48 hours in a week. In view of the facts and circumstances of this we decline to interfere. It is also relevant to mention that such liability for over time has ceased with the amendment of Section 70 of the Bombay Shops and Establishments Act, 1984 with effect from July 26, 1986 as the amendment has the effect of deleting the non-obstante clause in Section 70 as it stood earlier."

In order to appreciate the effect of the above observation, it is necessary to recapitulate the facts narrated in the judgment of this Court which was the subject matter of SLP No. 866 of 1992. The judgment of this Court was rendered in H.H. Datar (Dr.) A.M.O. Vs. P.S. Shivram, Gen. Manager, India Security Press and Others, . A reference to the report of this judgment shows that the petitioners before this Court were employees working in various capacities in the Dispensary attached to the factory of the India Security Press, Nasik, which was itself a registered Factory. They also had prescribed working hours for non-industrial workmen at 37 1/2 hours per work, except during emergency. when they had to continue work in the Dispensary. They were also claimed to be governed by the Fundamental and Supplementary Rules, Central Civil Services (Classifications, Control, and Appeal) Rules and the Orders issued by the Government from time to time. The Management of the India Security Press had taken a stand that the concerned workmen were not entitled to over time payment under the provisions of the Factories Act, 1948. The workmen made application before the Presiding Officer, Central Government Labour. Court claiming such benefits and the applications were allowed. Though the said orders were challenged before this Court, this Court took the view that the Dispensary was a part and parcel of the India Security Press, which was itself a Factory Linder the Factories Act and, therefore, the workmen employed therein would be entitled to the benefit of Section 59 of the Factories Act. Though it is not clear from the judgment of this Court as to whether the Dispensaries were separately registered under the provisions of the Shops and Establishments Act, one presumes so in view of the fact that the Supreme Court has pointedly referred to Section 70 of the Bombay Shops and Establishments Act. In any case, I am not faced with such a controversy. As rightly contended by Ms. D'Souza, learned Advocate for the Respondents, the only issue before the Central Government Labour Court, and before me is, whether the work carried on by the Respondent workmen entitled them to be treated as "workers" within the meaning of Section

12(1) of the Factories Act, 1948. Section 59 of the Factories Act prescribes payment of over-time at double the normal rates to a worker working in a Factory when he is required to work more than 9 hours in any day or more than 48 hours in any week. The expression "worker is defined in Section 2(1) of the Factories Act as :

"Section 2(1) : "worker" means a person employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for remuneration or not), in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process, [but does not include any member of the armed forces of the Union]."

This wide " work ", or through any agency, working in any manufacturing process, but also on any other kind of work incidental to, or connected with the manufacturing process, or the subject of the manufacturing process. In the instant case, all work carried out by the Respondent workmen was either incidental to, or at any rate, connected with the manufacturing process carried on in the Telecom Factory. This, at least, was not gain-said. The certificates issued to the concerned workmen make it clear beyond the pale of controversy that their work was connected with the manufacturing process. Though Mr. Gangal faintly contended that the certificates were issued only in respect of persons who had to enter the workshop and carry out work there, I am unable to accept this contention for two reasons. Firstly, the certificates themselves do not say so. Secondly, the pro-forma certificates being on record, there was no explanation for them, either in writing or by oral evidence, tendered before the Labour Court. I cannot, therefore, permit such a gloss to put on the certificates., at this stage in the writ proceedings. Considering the material before the Labour Court, I am satisfied that the Labour Court's finding that the concerned Respondent workmen were carrying out work "incidental to"or "connected with "the manufacturing process, appears to be correct and there is no reason to disturb the same. I am also of the view that the amendment carried out in Section 70 of the Bombay Shops and Establishments Act, 1948, the legal impact of which has been noticed, en passant, by the Supreme Court in its order in SLP No. 866 of 1902, does not in any way affect the merits of the orders which are impugned in the present writ petitions. I agree with the conclusion of the Central Government Labour Court that the concerned workmen were "workers" within the meaning of Section 2(1) of the Factories Act and, therefore, they were entitled to the benefit of Section 59 of the Factories Act, so far as the payment of over-time wages was concerned. I find no reason to interfere with the two impugned orders.

15. In the result, I find no merit in these writ petitions which are liable to be and are hereby dismissed. Rules made in both writ petitions are discharged.

16. Though normally I would be reluctant to grant costs in such matters, the

facts of these cases are eloquent enough to persuade me to grant costs. The workmen of the Telecom Factory had filed a number of applications before the Labour Court and obtained orders in their favour. At least in one order there was a challenge to the order by way of writ petition in this Court which was summarily dismissed. In the face of this clear-cut position, the Petitioners chose to drag the workmen for a fresh round of litigation by the present writ petitions, wherein interim relief by way of stay was obtained at admission stage on April 10, 1991. Consequently, for no fault on their part, the workmen were deprived of their rightful dues they were entitled to in law. In the circumstances, I am of the view that the Petitioners must be made liable to pay costs. The Petitioners shall pay costs quantified at Rs.1000/- (Rupees one thousand only) in each writ petition.

16. Certified copy expedited.