
(1997) 06 BOM CK 0032

In the Bombay High Court

Case No : Appellate Side Writ Petition No. 3015 of 1992

Chief General Manager, Telecom Factory

APPELLANT

Vs

H.R. Thakur and Others

RESPONDENT

Date of Decision : 24-06-1997

Acts Referred:

Factories Act, 1948 — Section 2, 59, 59(1), 59(2)
Industrial Disputes Act, 1947 — Section 2, 2(5), 33C(2)

Citation : (1998) 79 FLR 865 : (1998) 2 LLJ 981

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

Bench : Single Bench

Advocate : Mr. A.S. Rao, for the Appellant; Mrs. Nishita Mhatre, for the Respondent

Judgement

B.N. Srikrishna, J.—This Writ Petition under Article 227 of the Constitution of India is directed against two orders of the Central Government Labour Court No. 2, one dated 16th January 1991 made in Application Nos. LC-2/2211 to 2403 of 1989 and another dated 28th January 1992 made in Miscellaneous Application No. 2 of 1991, both under the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act".)

2. The Petitioner is the Chief General Manager of the Telecom Factory established by the Government of India in Deonar, Bombay. Respondent Nos. 1 to 193 are Class III and IV employees working in the Telecom Factory at Deonar. The Respondents are covered by the Central Civil Services (Classifications, Control and Appeal) Rules, 1965, Fundamental and Supplementary Rules and the different orders issued by the Government of India from time to time. It is not in dispute that the factory of the Petitioner is a "factory" within the meaning of Section 2(m) of the Factories Act, 1948 and is registered as such with the Chief Inspector of Factories, Maharashtra. The Petitioner, for their own reasons, used to designate Respondent Nos. 1 to 193 as "Non-Industrial workmen" and refused to implement the provisions of the Factories Act in respect of such categories of

workmen. The issue as to whether the provisions of the Factories Act would apply to so-called "Non-industrial workmen", has been concluded in respect of the Petitioner's Telecom Factory at Bombay by a judgment of this Court in Chief General Manager, Telecom Factory, Bombay & Ors. v. All India Telecom Engineering Employees Union & Ors., 1996 1 CLR 336, to which I was a party. By this judgment, it has been held that the workmen were covered by the provisions of the Factories Act and entitled to claim overtime wages u/s 59 thereof.

3. It appears that the Petitioner, while calculating the overtime wages payable to the Respondent workmen, refused to include the House Rent Allowance payable to the Respondent workmen in the computation. The Respondent workmen filed Application. The Respondent workmen filed Application Nos. LC-2/2211 to 2403 of 1989 before the Central Government Labour Court, Bombay, invoking Section 33C(2) of the Act and claimed the difference in overtime wages. By the first order dated 16th January 1991, the Labour Court held that the Respondents are entitled to be paid the difference in overtime wages arising on account of inclusion of House Rent Allowance in the computation of the overtime wages. The first order of the Labour Court was ex-parte because the Petitioner did not appear before the Court when the Applications were taken up for hearing. Being aggrieved by the first order of the Labour Court, the Petitioner moved Misc. Application No. 2 of 1991 for review of the order dated 16th January 1991. By this impugned order dated 28th January 1992, the Labour Court held that there was no power of review vested in the Labour Court and dismissed the Misc. Application for review Hence the present Writ Petition.

4. The fact that the first order of the Labour Court dated 16th January 1991 was ex-parte need not detain us. Mr. Rao, learned Advocate appearing for the Petitioner, has cogently urged the very some points which could have been urged before the Labour Court for the consideration of this Court and I have considered them on merits.

5. The first issue urged by Mr. Rao for consideration of the Court is whether the Petitioner's Telecom Factory would be an "industry" within the meaning of Section 2(j) of the Act and whether the applications made u/s 33C(2) of the Act were tenable. Mr. Rao relies on a judgment of two learned Judges of the Supreme Court in Sub-Divisional Inspector to Post, Vaikam & Ors. v. Theyyam Joseph etc. reported in 1996 (1) SCSLJ 294. In this judgment, the Supreme Court has taken the view that the duty of providing postal and telecommunication service was a sovereign function of the State in view of the directive principles of State policy enjoined in Part IV of the Constitution and as such the activity of doing so would not amount to an "industry". In fact, the entire ratio of the judgment on which Mr. Rao relied is contained in paragraph 6, which reads as under :-

"6. Having regard to the contentions, the question arises whether the appellant is an Industry ? India as a sovereign socialist, secular democratic republic has to establish an egalitarian social order under rule of law. The welfare measures

partake the character of sovereign function and the traditional duty to maintain law and order is no longer the concept of the State. Directive Principles of State policy enjoin on the State diverse duties under Part IV of the Constitution and the performance of the duties are constitutional functions. One of the duty is of the State is to provide telecommunication service to the general public and an amenity, and so is one essential part of the sovereign functions of the State as a welfare State. It is not, therefore, an industry."

6. Placing strong reliance on this judgment, Mr. Rao contended that the Supreme Court held clearly laid down that providing telecommunication service is a sovereign function and, therefore, the Telecom factory established by the Government of India in Bombay, irrespective of whether it is registered under the provisions of the Factories Act, would not be an activity amounting to an "industry" within the meaning of Section 2(j) of the Act. It is difficult to accept this contention of Mr. Rao. In the first place, the Supreme Court in terms has only declared that the Post and Telegraph Department was not amenable to Section 2(j) of the Act. The decision has proceeded on an analysis of the activity done by the Post & Telegraph Department and not of the telecommunication factory with which the present Writ Petition is concerned. In any event, considering the judgment of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , rendered by a Bench of Seven Judges. I am unable to accept to the submission of Mr. Rao that the Telecommunication factory established by the Government of India is not an "Industry" within the meaning of Section 2(j) so as not to be amenable to the provisions of the Act. The first contention of Mr. Rao, therefore, fails.

7. Mr. Rao then contended that, by a letter No. 5-49/74-TF dated 24/27th December, 1974, the Government had defined "Time Rate" as under :-

"Time Rate shall mean single hourly rate of overtime allowance based on pay, dearness allowance and compensatory allowance, if any."

and therefore, it did not include House Rent Allowance. He, therefore, contended that even if the Factories Act applied to the Respondent workmen, the Government having excluded House Rent Allowance from the computation of wages, the House Rent Allowance paid to the Respondent workmen would not amount to wages within the meaning of Section 2(vi) of the Payment of Wages Act, 1936, by reason of the second exclusory clause. It is difficult to accept this submission. In the first place, it is unnecessary to look into the provisions of the Payment of Wages Act, 1936 for understanding the manner in which the overtime is to be calculated u/s 59 of the Factories Act. Sub-section (2) of Section 59 of the Factories Act, 1948 defines the expression "ordinary rate of wages" for calculation of overtime as under :-

"(2) For the purpose of sub-section (1), "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the concessional sale to workers of foodgrains and other

articles, as the worker is for the time being entitled to, but does not include a bonus and wages for overtime work."

Sub-section (2) of Section 59 of the Factories Act, 1948, has been enacted by the Parliament in order to clearly lay down the manner in which "ordinary rate of wages" is to be computed for payment of overtime under sub-section (1) of Section 59. Since this is the guideline provided by the Parliament in the statute itself, it is unnecessary to look for it elsewhere, as in the Payment of Wages Act, as Mr. Rao would like the Court do do.

8. There is also second reason why the contention of Mr. Rao cannot prevail. Even assuming for a moment that the definition of "wages" in Section 2(vi) read with the exclusory clause (2) has to be applied for determining the meaning of "ordinary rate of wages" for calculating overtime, it has not been shown that there is any special or general order issued by the State Government excluding the value of the house accommodation (House Rent Allowance) from the computation of wages. Such a fact was neither pleaded nor proved before the Labour Court, nor is there any attempt to place it before this Court in the Writ Petition, nor is a copy of any such order been made available to the Court. In the circumstances, the second contention of Mr. Rao also must fail.

9. In the result, I find no infirmity in the impugned orders of the Labour Court, nor merit in this Writ Petition. The Writ Petition fails and hereby dismissed.

10. Within one week from today, the Petitioner shall file a detailed statement in the Registry of this Court showing the actual amount of overtime that would become payable to each of the Respondent workmen for the period ending 31st July 1992 under the order of the Labour Court dated 16th January 1991, totalling to Rs. 1,80,393/-, which has been deposited by the Petitioner in this Court.

11. The Registry shall encash the fixed deposit and pay to each of the Respondent Nos. 1 to 193 the amount shown as his entitlement together with pro-rata amount of interest accrued on the deposit amount till the date of encashment of the fixed deposit receipt.

12. Rule discharged with costs quantified at Rs. 1000/-.

13. Issuance of certified copy of this judgment expedited.