
(2018) 07 MP CK 0241
In the Madhya Pradesh High Court
Case No : Writ Appeal No.362 of 2018

Dhirendra Singh	Vs	APPELLANT
Cement Corporation Of India Ltd		RESPONDENT

Date of Decision : 25-07-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 10
Madhya Pradesh Industrial Relation Act, 1960 — Section 1, 1(3)

Citation : (2018) 07 MP CK 0241

Hon'ble Judges : Hemant Gupta, CJ;S.K. Gangele, J

Bench : Division Bench

Advocate : R.C. Shrivastava, Anoop Nair

Final Decision : Dismissed

Judgement

The challenge in the present appeal is to an order passed by learned Single Bench on 01.02.2018 in Writ Petition No.11638/2015 (Cement Corporation

of India Ltd. vs. Shri Dhirendra Singh) whereby, the writ petition filed by Cement Corporation of India was allowed and it was held that the dispute

could be raised only under Madhya Pradesh Industrial Relation Act, 1960 (In short "the State Act").

2. The appellant herein was working with the Sales Department of Cement Corporation of India. His services were terminated w.e.f. 21.08.1999. The

workman raised an industrial dispute under Section 10 of the Industrial Disputes Act, 1947 (for short "the Central Act"). The dispute was

referred to Central Government Industrial Tribunal, Jabalpur. The Tribunal vide Award dated 26.02.2015, found that the action of the Cement

Corporation of India in terminating the services is illegal and, therefore, the workman was ordered to be reinstated with continuity of services. The

Central Government Industrial Tribunal did not find any merit in the arguments raised by the Industry that such Industry is covered under the State

Act, therefore, dispute could be raised only under the State Act and Industrial Tribunal under the Central Act has no jurisdiction to entertain and

decide the dispute under Section 10 of the Central Act.

3. It may be stated that State Act was enacted after receiving the assent of the President on 17.11.1960. The Act was published in the M.P. Gazette

(Extra-ordinary) on 31.12.1960. In terms of Section 1(3) of the State Act, the Act would be applicable in respect of any or all Industries or in respect

of number of employees engaged by the Industry as the State Government may deem appropriate. In terms of such powers, the State Government

published a Schedule giving the list of Industries and also specified the number of workmen to be employed before the State Act. Such schedule

included the 'Cement' as Entry no.1 to which the State Act was applicable. However, the Entry 'Cement' was omitted vide notification

dated 10.10.2005. Therefore, at the time of dispute raised by the workman, the State Act was applicable.

4. The argument of the appellant is that appellant was engaged in the Sales Department which is distinct from the factories of the Cement Corporation

of India; therefore, Sales Department is excluded from the operation of the State Act. Learned counsel for the appellant relies upon the judgment of

the Division Bench of this Court reported as 1968 MPLJ 95 (Jamul Cement Works, Jamul vs. President, State Industrial Court Act, M.P. Indore and

others).

5. We have heard learned counsel for the parties and find no merit in the present appeal.

6. The Entry 'Cement' in Schedule is wide, which is not restricted only to the factories being run by the Cement Corporation of India. Neither

Section 1 of the State Act or the Schedule appended thereto gives any indication that only factories would be covered under the said Act. The Entry

has to be given natural meaning which would include the entire establishment relating to the activity of cement. Therefore the appellant has to raise

dispute under State Act as the State Act will have overriding effect over the Central Act in terms of the Presidential assent received by the State Act.

7. In Jamul Cement Works (supra), the dispute was raised by the workers who

were engaged in the construction of the cement factory. It was held that such workers were not working for the cement manufacturing activity and activities or operation incidental to the main industry of manufacturing cement. They were engaged in the construction of cement factory, which was an activity before the cement can be manufactured. The relevant extract of the judgment reads as under:-

5. In our Judgment, the contentions advanced on behalf of the petitioner must be given effect to. As is clear from Section 1 (3) of the Act, the provisions of the Act, other than Sections 1 and 112, do not apply to all industries or undertakings in any industry, but apply to those industries and undertakings in any industry as may be notified under Section 1 (3). The notification issued on 31st December, 1960 under Section 1 (3) of the Act applied to provisions of the Act, other than Sections 1 and 112 inter alia to cement. The word cement means cement manufacturing industry and activities of operations incidental to the main industry of manufacturing cement. The setting up and construction of a cement factory is no doubt essential before cement can be manufactured and thereafter distributed and sold. But the construction of a cement factory cannot in any way be likened to any activity or operation in the manufacture of cement or its distribution or sale. It is not necessary that a company engaged in the manufacture should itself set up the cement factory. The constructional work can be entrusted to any contractor or a firm of structural engineers, and when the construction is complete the company can take over the completed construction and commence manufacturing cement. The contractor or the firm to whom the construction work has been entrusted, cannot clearly be said to engage in the manufacture of cement. For the same reason, if a company, which intends to manufacture cement, itself undertakes the constructional work of its factory, then it cannot be said that the cement industry has come into existence from the moment the constructional work started. Again, the constructional work of a cement factory cannot be said to be an activity or operation incidental to the main industry of cement manufacturing. The constructional work is not something which follows or depends upon or appertains to the manufacture of cement as the primary activity. The constructional work of a cement factory is in itself an independent primary work. In our opinion, to say that the construction of a

cement factory is a part of cement industry, is to ignore totally the real nature both of the cement manufacturing industry and of the construction of a cement factory. As has been pointed out by this Court in *R.N. Mishra v. W.Manager B. and & C.*, as the act does not apply to all industries or undertakings therein but only to those which the Government may select for being governed by the Act, the industries that may be specified in a notification under Section 1 (3) must be understood in a limited sense and not in wider sense. In that case, it was also pointed out that the reason why the Legislature has not made the Act applicable to all industries or undertakings therein, but has left to the Government to determine the industry or industries or undertakings therein to which should be applied, is that conditions of work and employment vary from industry to industry, and also from undertaking to undertaking in any industry. It is plain enough that the nature of work done in the construction of a cement factory and the conditions under which the employees on the constructional side work are all together different from the work which the employees engaged in the manufacture of cement do and the conditions under which they work.â??

8. In fact, in view of the aforesaid judgment itself, the activities or operation incidental to the main activity of manufacturing cement are covered by the Schedule.

9. In view thereof, we find no error in the order passed by learned Single Bench which may warrant any interference in the present writ appeal.

Dismissed.