

(1991) 07 BOM CK 0083

In the Bombay High Court

Case No : Writ Petition No. 3846 of 1983

H.H. Datar (Dr.) A.M.O.

APPELLANT

Vs

P.S. Shivram, Gen. Manager, India Security Press and Others

RESPONDENT

Date of Decision : 08-07-1991

Acts Referred:

Administrative Tribunals Act, 1985 — Section 28
Factories Act, 1948 — Section 59

Citation : (1991) 63 FLR 519 : (1995) 3 LLJ 44

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : S.B. Naik and S.G. Borkar, for the Appellant; V.D. Govilkar, for R-1, for the Respondent

Final Decision : Allowed

Judgement

H.H. Kantharia, J.—In this writ petition under Article 227 of the Constitution, the petitioner-workman, on his behalf and on behalf of 19 others, challenges the order dated July 26, 1983 passed by the learned Presiding Officer of the Central Government Labour Court No. 1 rejecting the applications u/s 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act").

2. The relevant facts giving rise to this writ petition are as under:

There are two groups of applications, viz. application Nos LCB 417 to 427 of 1972 filed by 11 applicants u/s 33C(2) of the Act in the year 1972 in the Labour Court presided over by the second Respondent. The second group of application Nos. 319 to 327 of 1981 were filed in the same Court by the other set of workmen in the year 1981 under the same provisions of law.

3. It was the case of the applicants therein that they were working in various capacities in the dispensary attached to the factory of the India Security Press at Nasik Road, Nasik. The prescribed working hours for them were 37 1/2 hours per week though, according to them, the first respondent press used to take more

work from them in that the first respondent required the applicants to work two hours on all Sundays and paid holidays by rotation but they were not paid anything for the said extra work. Further contention of the applicants was that they were required to attend to the night shift emergency calls between 8.00 p.m. and 8.00 a.m. on the following day by rotation twice a week for no payment at all for this extra work also. The applicants, therefore, claimed the payments for the said extra work at double the rate of their normal wages with full allowances. According to the applicants they were entitled to receive the said benefits for the period from 1.7.1963 to the date of the applications.

4. The applications were resisted by the first respondent-press and it was their case in the written statement that the applicants had not stated full particulars of the arrears of overtime and normal wages claimed by them. It was admitted that the applicants were working in the dispensary of the department of the first respondent-press but they were paid dearness allowance, dearness pay and other allowances as were admissible under the orders of the Central Government. According to the first respondent, the applicants were not working in the factory but in the dispensary of the department which was not situated within the precincts of the factory and that they were not borne on the establishment of the factory but were borne on the general establishment. The first respondent also contended that the applicants were not required to enter into the factory for performance of their usual duties except emergency cases which were rare occasions, during staggered hours of work. It was also contended that normally the applicants were expected to put in 8 hours of work daily i.e. 48 hours in a week like other hospital staff but since they had to attend two hours on Sundays and Holidays by rotation, the present working hours were fixed at 37 1/2 hours from Monday to Saturday. It was admitted that they were required to put in two hours of work on alternate Sundays and were also required to attend to the night emergency calls by rotation but such emergency calls were very rare. It was the case of the first respondent that the applicants were governed by the rules and orders issued by the Government and were not covered under the provisions of the Factories Act and there were no Government orders regarding payment of overtime to the staff working in the dispensary and the hospital. They were also not entitled to overtime under an existing contract, further contended the first respondent. According to the first respondent, the provisions of Industrial Disputes Act were not applicable to the hospitals and dispensaries. Then, the first respondent pleaded that the applicants were employed in the dispensary which was conducted for the employees of the department and the maintenance of dispensary or hospital for the workers of the factory was a welfare activity which does not attract the provisions of the Factories Act.

5. The applications were dealt with by the then Presiding Officer of the Central Government Labour Court and were allowed which decision was challenged in this Court by the first respondent and while disposing of the said writ petition this Court had remanded the matter back to the Labour Court for evidence and

disposal in accordance with law. Thereafter the applications were again taken up for hearing and parties were permitted to adduce oral as well as documentary evidence and on conclusion of the trial present impugned order came to be passed.

6. Now, it appears that the learned Counsel appearing on behalf of the applicants in the Labour Court had filed a precept in that Court on 27.5.1983 that the applicants did not want to press their claim for overtime work put in by them between 37 1/2 hours and 48 hours a week and that they restricted a claim for work done beyond 48 hours a week and had claimed that the said payment at double the rate of their normal wages be given to them u/s 70 of the Bombay Shops and Establishments Act, 1948 read with Section 59 of the Factories Act, 1948. Before we deal with the submissions made at the Bar, it would be convenient to incorporate here the relevant provisions of law under which the petitioner claimed overtime wages on his behalf and on behalf of other workmen u/s 33C(2) of the Act. Thus, Section 45 of the Factories Act reads as under:

"45. First-aid appliances:-

(1) There shall in every factory be provided and maintained so as to be readily accessible during all working hours first-aid boxes or cupboard equipped with prescribed contents, and the number of such boxes or cupboards to be provided and maintained shall not be less than one for every one hundred and fifty workers ordinarily employed at any time in the factory.

(2) Nothing except the prescribed contents shall be kept in a first-aid box or cupboard.

(3) Each first-aid box or cupboard shall be kept in the charge of a separate responsible person, who holds a certificate in first-aid treatment recognised by the State Government and who shall always be readily available during the working hours of the factory.

(4) In every factory wherein more than five hundred workers are ordinarily employed there shall be provided and maintained an ambulance room of the prescribed size, containing the prescribed equipment and in the charge of such medical and nursing staff as may be prescribed and those facilities shall always be made readily available during the working hours of the factory."

This goes to show that the dispensary for catering the needs of the workmen of the first respondent-press was brought into existence statutorily. Section 45 of the Factories Act has to be read with Rule 78 of the Maharashtra Factories Rules, 1963 which reads as under:

"78. Ambulance Room:-

(1) The ambulance room or dispensary shall be in charge of a qualified medical practitioner assisted by at least one qualified nurse and such subordinate staff as the Chief Inspector may direct.

(2) There shall be displayed in the ambulance room or dispensary a notice giving the name, address and telephone number of the medical practitioner in charge. The name of the nearest hospital and its telephone number shall also be mentioned prominently in the said notice.

(3) The ambulance room or dispensary shall be separate from the rest of the factory and shall be used only for the purpose of first-aid treatment and rest. It shall have a floor area of at least 24 square metres and smooth, hard and impervious walls and floors and shall be adequately ventilated and lighted by both natural and artificial means, an adequate supply of wholesome drinking water shall be laid on and the room shall contain at least.....

XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX (4) The occupier of every factory in which these Rules apply shall for the purpose of removing serious cases of accident or sickness provide in the premises and maintain in good condition a suitable conveyance unless he has made arrangements for obtaining such a conveyance from a hospital.

(5) A record of all cases, accident and sickness treated at the room shall be kept and produced to the Inspector or Certifying Surgeon when required.

Explanation : For the purpose of this rule, "qualified medical practitioner" means a person holding a qualification granted by an Authority specified in the schedule to the Indian Medical Degrees Act, 1916 or in the Schedules to the Indian Medical Council Act, 1956."

This provision of law shows that the dispensary which was connected with the first respondent-press was governed by the provisions of the Factories Act. And according to Section 59 of the Factories Act where a worker works in a factory for more than nine hours in a week, he shall, in respect of the overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. Therefore, all this provision of law shows that the applicants concerned in this writ petition were entitled to overtime wages at double the rate of their normal wages if they had worked for more than 48 hours a week.

7. Mr. Govilkar, learned Counsel appearing on behalf of the first respondent-press, urged that Section 45 of the Factories Act read with Rule 78 thereof does not contemplate a dispensary but only an ambulance room and, therefore, the applicants who worked in a dispensary in this case would not be governed by the provisions of Section 45 of the Factories Act. I find no substance in the submission of Mr. Govilkar for the simple reason that Rule 78 of the Maharashtra Factories Rules, 1963 clearly speaks in terms of ambulance-room or dispensary. In other words, there has to be either an ambulance-room or a distinct dispensary for the purpose of looking after the medical care of the workmen employed at the first respondent-press and accordingly there was a dispensary attached to the first respondent- press.

8. The crucial point, however, that arises for my consideration in this writ petition

is whether the dispensary in question was a part and parcel of the first respondent-press and/or was an integral part of the said press because the second respondent rejected the applications of the petitioner and others on the ground that the dispensary in question was a separate entity and was not a part and parcel of the first respondent-press. The oral as well as documentary evidence in this regard does not support the findings arrived at by the second respondent-Labor Judge and to that extent his findings and the consequential judgment and order passed by him are perverse. The finding arrived at by him is, according to me, contrary to the evidence on record. First of all, there is a letter dated October 30, 1980 on record from the General Manager of India Security Press addressed to the Under Secretary, Government of India, Ministry of Finance, Department of Economic Affairs, New Delhi inviting attention of one G.B. Bhalla. A perusal of this letter shows that the India Security Press at Nasik Road, Nasik was having a dispensary in the residential area of the press for the last 23 years with appropriate medical staff and the said dispensary catered to the requirements of the workers, while on duty as well as those staying in the press estate and that emergency duties were also arranged to meet any exigencies during day and night. In other words, there was a dispensary attached to and for the purpose of serving the medical care of the workmen employed by the first respondent-press which very much goes to show that the dispensary in question was an integral part of the first respondent-press. Hemant Datar (petitioner) deposed in his evidence in the Labour Court that the dispensary where he and the other applicants work was situated in the precincts of the Security Press. Of course, there is some evidence to show that the said dispensary is at a distance of one and half furlongs away from the press but Hemant Datar stated in clear terms in his cross-examination that there was a main gate of the India Security Press campus along the road which goes to Pune and as one enters the main gate for going to the factory, the dispensary was at the right side at a distance of about 100 yards from the main gate. He also stated that formerly the dispensary was on the left hand side of the main gate at a distance of about 50 yards. In fact, what is stated was that from the old dispensary the factory and the administrative office of the press were at a distance of about one furlong and in between there were residential quarters. This evidence, therefore, shows that the dispensary in question was within the precincts of the press. His evidence further shows that the service conditions of the persons working in the dispensary were governed by the fundamental rules of the press. Another witness examined on behalf of the petitioner and others was C.V. Mathew who deposed that the dispensary in question was owned by the press and all expenditure was borne out by the press. His evidence also shows that no person other than the employees of the press could get the benefit of the dispensary and that the facility was extended to the members of the family of the employees of the press. There is some evidence to show that besides the employees of the press and their family members, some police officers on duty were also taking benefits of the dispensary from which Mr. Govilkar made an argument that the dispensary was not for the exclusive use of the workmen

employed by the press and their family members from which it could be gathered, further submitted by Mr. Govilkar, that the dispensary was not a part and parcel of the press with which argument I am unable to persuade myself to agree. Ghanshyam Tiwari who was examined on behalf of the first respondent-press deposed that the staff working in the factory were also governed by the fundamental rules. His evidence also shows that the wage bills of the dispensary staff were prepared in the Accounts Section of the press on the basis of the muster maintained at the dispensary. Therefore, the evidence adduced on behalf of the press also shows that the dispensary was part and parcel of the press.

9. In this view of the matter, the finding of the learned Labour Judge that the dispensary in question was not an integral part of the press was perverse because such a finding was arrived at contrary to the evidence on record and that is now the impugned judgment and order suffer from error apparent on the face of the record.

10. Mr. Govilkar submitted that as held by the Supreme Court in case of Mohd. Yunus Vs. Mohd. Mustaqim and Others, a mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227 and the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited to seeing that an inferior Court or Tribunal functions within the limits of its "authority" and not to correct an error apparent on the face of the record, much less an error of law. There is no dispute about this proposition of law but the point here is that the finding arrived at by the Labour Court was contrary to the evidence on record and if that was not corrected, there would be total miscarriage of justice. Mr. Govilkar also urged that the finding of fact arrived at by the learned Labour Court need not be disturbed by this Court while exercising supervisory writ jurisdiction under Article 227 of the Constitution. As stated above, if the finding of fact arrived at here which is perverse, if not corrected would miscarry the justice and, therefore, I feel obliged to correct the same.

11. Lastly, Mr. Govilkar submitted that this is a service matter between the first respondent-press and their employees and would be covered by the provisions of the Administrative Tribunals Act, 1985 and, therefore, this Court has no jurisdiction to entertain this writ petition and decide the same on merits. I find no force in the argument of Mr. Govilkar for the simple reason that Section 28 of the Administrative Tribunals Act, 1985 clearly lays down that any matter dealt with or to be dealt with by any Industrial Court, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force would be excluded from the jurisdiction of the Administrative Tribunal constituted under the Administrative Tribunals Act, 1985. The present matter was dealt with and disposed of by a Labour Court validly constituted under the Industrial Dispute Act, 1947 and the orders passed by such a Tribunal could only be corrected under the supervisory jurisdiction of the High Court under Article 227 of the Constitution.

12. In this view of the matter, the writ petition succeeds and the same is allowed. The impugned order passed by the second respondent-Labor Judge is quashed and set aside, Ordinarily, I would have sent back this matter to the Labour Court for calculating the amounts due and payable to the petitioner and the other concerned workmen; but if that is done it would only take more time and especially when the claims made by the petitioner and others are very old. I am not inclined to remand the matter back to the Labour Court. Instead, the first respondent-press is hereby directed to file the calculations of the amounts due and payable to the petitioner and all the concerned workmen involved in this writ petition in this Court on or before 8th August, 1991 and on receipt of the said calculations further orders as to payment to the petitioner and other workmen would be passed by this Court and the writ petition will then be finally disposed of.