

(2015) 11 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8679 of 1997

I.T.C. Ltd. and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-11-2015

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 2(4), 6
Constitution of India, 1950 — Article 226, 227
Factories Act, 1948 — Section 2(m)

Citation : (2015) 11 PAT CK 0043

Hon'ble Judges : Rakesh Kumar, J.

Bench : Single Bench

Advocate : Alok Kumar Sinha and Rohitabh Das, for the Appellant; Yogendra Prasad Sinha, AAG 15, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—In the present writ petition filed under Article 226 and 227 of the Constitution of India, the petitioners have prayed for quashing of orders contained in letter/notice No. 1136 dated 14.12.1996 (Annexure - "1" to the writ petition) and letter No. 368 dated 30th May 1997 (Annexure - "2" to the writ petition). By Annexure - "1" the Chief Inspecting Officer, Bihar, Patna directed the Managing Director, Human Resources, I.T.C. Ltd. (petitioner No. 1) to file an application for registration of his establishment under Section 6 of the Bihar Shops And Establishment Act, 1953 (hereinafter referred to as "the Bihar Act, 1953") within a fortnight before the Labour Superintendent, Munger. The same authority i.e. the Chief Inspecting Officer vide Annexure - "2" to the writ petition, on the request made by the petitioners reiterated his stand, as incorporated in letter No. 1136 dated 14.12.1996 (Annexure - "1" to the writ petition). The petitioners have further prayed for quashing of two letters i.e. letter dated 24.12.1996 and letter dated 10.6.1997 (Annexures- "3" and "4" respectively) issued from the office of the Labour Superintendent, Munger directing the petitioners to get its establishment registered under the Bihar Act, 1953 and

threatening the petitioners with prosecution.

2. According to the pleadings, the petitioner No. 1 is a company within the meaning of the Companies Act, being registered under the Companies Act, 1956 and is engaged in the manufacturing and sale of cigarettes. The petitioner No. 1 is a cigarette factory located in different states including Bihar at Munger. The company is also having a printing factory at Munger to meet the in - house requirements for printing of shells and slides etc. required for packing cigarettes/smoking mixtures manufactured by it. The cigarettes/smoking mixtures are sold through the marketing offices of the petitioners" company located in different parts of India including one at Patna. It has been disclosed in the writ petition that the Patna Branch of the company is looking after the marketing of cigarettes/smoking mixtures for the entire state of Bihar. It has been claimed that the petitioner No. 1 had employed a large number of workers in its cigarette manufacturing company and printing factory at Munger and the said factory at Munger is registered under the Factories Act, 1948. Large number of workers in cigarette manufacturing factory and printing factory at Munger which are registered under the Factories Act, 1948, are having separate registration Nos. The workers in the cigarette factory are engaged in various nature of works incidental to or directly connected with the manufacturing of cigarettes/smoking mixtures. All the workers employed in the printing factory are engaged in various nature of works incidental or directly connected with the manufacturing process, printing process of shells and slides and other packaging materials required for packaging of cigarettes/smoking mixtures manufactured by the petitioners" company.

3. It is further case of the petitioners that earlier in the year 1994-95 also the respondents had initiated for directing the petitioner No. 1 to get it registered under the Bihar Act, 1953. Since it was a factory registered under the Factories Act and all the workers were worker within the meaning of Section 2(m) of the Factories Act. The petitioners had approached this court with a prayer to restrain the respondents from taking any step or directing the petitioners to get it registered under the Bihar Act, 1953. In the said writ petition the respondent/ State had appeared and after hearing the parties at length, a single bench of this court by its detailed order dated 22.12.1995 allowed the writ petition i.e. C.W.J.C. No. 3252 of 1995 and the impugned orders were quashed. A copy of the order dated 22.12.1995 passed in C.W.J.C. No. 3252 of 1995 has been brought on record as Annexure - "5" to the writ petition. This court while allowing the writ petition i.e. C.W.J.C. No. 3252 of 1995 had indicated that the respondents may decide the matter afresh by a reasoned order after giving opportunity to the petitioners.

4. Sri Alok Kumar Sinha, learned counsel for the petitioners, has argued that since the issue that the petitioners" factory situated at Munger was not required to be registered under the Bihar Act, 1953 once had already been set at rest vide Annexure - "5" to the writ petition i.e. by the order dated 22.12.1995 passed in

C.W.J.C. No. 3252 of 1995, the respondents were not at all authorized to re-open the same issue. He submits that of - course while allowing the writ petition this court had given an option to the respondents to reexamine the same and pass appropriate order, this court had not granted liberty to the respondents to again raise the same issue which was already decided. Of - course, vide Annexure - "1" the petitioners have been directed to get its establishment registered under the Bihar Act, 1953, purported to be issued in the light of the order passed in C.W.J.C. No. 3252 of 1995, it is again liable to be set aside solely on the ground that the same is contrary to the direction of the writ court whereby the respondents were directed to pass a reasoned order. According to Sri Sinha, neither Annexure - "1" nor Annexure - "2" assigns any reason for directing the petitioners to get it registered under the Bihar Act, 1953. He has referred to number of paragraphs of the order dated 22.12.1995 passed in C.W.J.C. No. 3252 of 1995. He further submits that vide Annexure - to the writ petition the respondent No. 2 had directed the Clerical Department of the petitioner No. 1 to get it registered under the Bihar Act, 1953 which is contrary to the order passed by this court as well as the law settled by the Apex Court. He submits that the alleged Clerical Department is within one premises of the factory in question and as such, there cannot be any distinction in between the Clerical Department and the actual manufacturing section of the factory in question. The work being discharged by the workers in the Clerical Department is also incidental to the manufacturing work. In support of his submission he has placed reliance on a judgment of the Apex Court reported in *The Works Manager, Central Railway Workshop, Jhansi Vs. Vishwanath and Others*, .

5. Sri Yogendra Prasad Sinha, learned A.A.G. No. 15 has opposed the prayer of the petitioners. According to learned State Counsel the employees of the Clerical Department may not be treated as worker and as such, the said Department is liable to be registered under the Bihar Act, 1953. He emphasizes that the clerical work being discharged by the employees of the petitioner No. 1 may not be termed as incidental to the manufacturing work. He has referred to the averments made in the counter affidavit and also supplementary counter affidavit and submits that once this court in C.W.J.C. No. 3252 of 1995 had granted liberty to the respondents to proceed and decide the matter afresh, the submission made by learned counsel for the petitioners that issue has already been settled is not sustainable. He submits that the orders impugned were passed in consonance with the order dated 22.12.1995 passed in C.W.J.C. No. 3252 of 1995 and there is no error or illegality in the impugned orders.

6. After hearing learned counsel for the parties and considering the materials available on record, the court is of the opinion that issue regarding applicability of the Bihar Act, 1953 in respect of the petitioner No. 1 has virtually been set at rest by this court by a detailed order passed on 22.12.1995 in C.W.J.C. No. 3252 of 1995 (Annexure - "5" to the writ petition). I feel inclined to incorporate certain concluding paragraphs of the order dated 22.12.1995. At the moment, it is necessary to incorporate paragraph Nos. 17, 18, 19 of the order dated

22.12.1995 in C.W.J.C. No. 3252 of 1995, which is as follows:--

"17. In my view, simply because the concerned employees are working in a different building, it cannot be presumed that their day to day work is not connected with the manufacturing process or incidental to or connected with the manufacturing process of cigarettes. From a bare reference to the definition of "factory" under section 2(m) of the Factories Act, it would be patent that if in the premises of the factory including the precincts thereof, workers engaged in the manufacturing process, would be called "workers" within the Factories Act. It is well known that the meaning of the word "premises" is " a piece of land including buildings". Therefore, " premises" including "precincts thereof within the meaning of Section 2(m) would include all buildings with its surroundings. Therefore, simply on the basis of a bald statement of the respondents, it cannot be said that all the workers are covered under the definition of Section 2(4) of the Bihar Act. In this regard, it would be useful to quote a relevant passage from the judgment in the case of M/s. Grauer and Weil (India) Ltd. Vs. Collector of Central Excise, Baroda, as under:--

"11. xxx The words "any premises including the precincts thereof" under Section 2(m) are therefore wide enough to include all buildings with its surroundings which form part of one unit. If therefore, in such an area ten or more workers are working and in any part thereof manufacturing process is being carried on with the aid of power it would be a "factory (within the meaning of Section 2(m) ."

18. I have already noticed that the impugned orders as well as the statement of the respondents in their counter affidavits are completely vague. The respondents have failed to assign any reason, as also to place relevant materials in support of their stand that the establishment in question is covered under the meaning of Section 2(4) or Section (6) of the Bihar Act. In my view, unless all the required formalities are observed, it would be really hard to take a decision that the establishment requires registration under the Bihar Act.

19. Therefore, on a plain reading of the relevant provisions and other materials brought on the record, I have no option but to hold that the respondents have failed to justify that the establishment in question is required to be registered under the provisions of rule 3 of the Rules. It is further held that neither proper enquiry was conducted nor due opportunity was given to the petitioners before the impugned action of the authority."

7. From perusal of the aforesaid observations and directions it would be difficult to perceive as to whether the respondents were justified in opening the issue afresh. Of - course, certain observations were recorded by this court in C.W.J.C. No. 3252 of 1995. It appears that some of the observations of this court in paragraph No. 20 of the order dated 22.12.1995 passed in C.W.J.C. No. 3252 of 1995 had emboldened the respondents to decide the matter afresh. Accordingly, it would be appropriate to quote paragraph No. 20 of the order dated 22.12.1995

passed in C.W.J.C. No. 3252 of 1995 which is as follows:--

"20. In the result, this writ application is allowed and impugned orders are quashed to the extent a direction was given to the petitioners to get registration of the establishment under sub-rule (1) of the rule 3 of the Rules. But this order will not stand in the way of the respondents to decide the matter afresh by a reasoned order after giving appropriate opportunity to the petitioners in accordance with law as also having regard to the relevant provisions of the Act."

8. It appears that in view of the observations made in paragraph No. 20 in C.W.J.C. No. 3252 of 1995, the respondents have raised the issue again and asked show - cause from the petitioners, which was replied by the petitioners. If for the time being it is assumed that earlier this court had granted liberty to the respondents to consider the matter afresh, there was specific observation that it must be decided by a reasoned order. Now the question is as to whether either Annexure - "1" or Annexure - "2" assigns any reason. To better appreciate it is necessary to re-produce Annexure - "1" and "2" to the writ petition, as follows:--

9. It is true that in the counter affidavit and supplementary counter affidavit the respondents have tried to justify that after giving full opportunity, a reasoned order has been passed, however, on perusal of the aforesaid two orders no one can perceive regarding assigning any reason in the aforesaid orders. Accordingly, if for the time being it is assumed that liberty was granted to the respondents to decide the matter afresh, the orders impugned are liable to be set aside solely on the ground that no reason has been assigned. Accordingly, in view of the facts and circumstances, the impugned orders i.e. Annexure - "1" to "4" are hereby set aside.

10. The writ petition stands allowed.