

(1995) 12 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 3252 of 1995

I.T.C. Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 22-12-1995

Acts Referred:

Citation : (1995) 12 PAT CK 0005

Final Decision : Allowed

Judgement

N. Pandey, J.—This application under Articles 226 and 227 of the Constitution of India, on behalf of the Petitioner, is for issuance of an appropriate writ quashing the direction of the Assistant Labor Commissioner contained in Annexure 1, including the letters of the Deputy Labor Commissioner as well as Assistant Labor Commissioner, contained in Annexure 19 and 20, respectively.

2. A prayer has also been made to declare that the provisions of the Bihar Shops and Establishments Act, 1953 (hereinafter called "the Bihar Act") is not applicable to the workers of the Petitioner's establishment.

3. The Petitioner is a company within the meaning of the Companies Act, 1956, engaged in manufacturing and sales of Cigarettes having its factories at Khiderpur, in West Bengal, Saharanpur in Uttar Pradesh and Munger in Bihar and Bangalore in Karnataka. The Petitioner company has employed a large number of workers in its cigarettes manufacturing factory and printing factory at Munger. Both the factories were registered under the Factories Act, 1948, having separate registration numbers.

4. It appears on 17th March, 1992, the Assistant Labour Commissioner, Patna, informed the Chairman of the Company that during inspection, on 10.3.1992, by a senior clerk on behalf of the Inspecting Officer, it was found that 166 workmen employed in different departments viz. commercial, printing, personnel, guards, computer etc. were not directly engaged in manufacturing process of cigarettes. Therefore, they are covered under the provisions of the Bihar Act. Similar letters

were also issued by the Labour Superintendent on 21.5.1993 and 27.5.1993, asking the Branch Manager to get the company registered under Rule 3 of the Bihar Shops and Establishments Rules, 1955 (In short "Rules") failing which necessary action including prosecution shall be started.

5. Having received such letters, objections were filed by the Petitioners that all the 166 workers about whose reference was given in the impugned letters, are engaged in such works which are incidental to or connected with the manufacturing process of the cigarette factory and, therefore, they are "Workers" as defined u/s 2(b) of the Factories Act. It is stated that employees in question have always been treated as worker of the factory and have also been included in the returns filed by the company under the Factories Act. Therefore, the Respondents were not justified while directing the Branch Manager of the company to get the establishment registered under the "Bihar Act". It is alleged that the Respondents even without having proper inspection of the establishment, and/or considering the objection of the Petitioners by order dated 20.4.1995 (Annexure 19) as also subsequent order dated 2.5.1995 (Annexure 20), reiterated their earlier stand in a quite mechanical and arbitrary manner.

6. Mr. Shanti Bhushan, learned Senior Counsel appearing for the Petitioners, submitted that the decision of the authorities to include the company under the mischief of Bihar Act is highly illegal and arbitrary. He contended that from the various materials brought on the record and details about nature of job undertaken by the concerned workers, it would be established that they are engaged in such works which are directly involved in manufacturing process or engaged in such kind of works incidental to or connected with the manufacturing process of cigarettes. In fact such workers are covered by the definition of "worker" under the Factories Act. A bare reference to the definition of the employees as contemplated u/s 2(4) of the "Bihar Act" it would reveal that "Workers" as defined under the Factories Act are not to be included under the provisions of Bihar Act. In such a situation, the Petitioner company is not required to undergo the formalities of registration under Sub-rule (1) of Rule 3 of the Rules.

7. It was next contended that the Respondents have failed to appreciate that working hours in a factory as prescribed under the provision of Section 57 of the Factories Act and that, in an establishment, according to Section 7 of the Bihar Act, are completely different. A worker defined under the Factories Act is required to work in different shifts at any time within 24 hours whereas no establishment as defined under the Bihar Act shall on any day be opened earlier than 9 p.m. and closed later than 9 p.m. Similarly there are many other provisions as contemplated in Chapter VI of the Factories Act, which also can not be at pari materia with those in the Bihar Act. Therefore, it will be really impracticable to make most of the provisions of the Bihar Act applicable to the "workers" defined under the Factories Act. Under the Factories Act, night shifts have been provided u/s 57, while u/s 7 of the Bihar Act, no establishment shall

on any day be opened earlier than 9 a.m. and closed later than 9 p.m. Therefore, it would be very difficult to reconcile with both the situations if the provisions of the Bihar Act are made applicable to the workers as defined under the meaning of Factories Act.

8. In my view, for the purpose of deciding the point at issue as also for a comparative study of both the provisions, it is necessary to refer to Section 2(4) of the Bihar Act, as well as Section 2(i) and (m)(i) of the Factories Act.

Section 2(4) of the Bihar Act runs as follows:

2(4) "employee" means a person wholly or partially employed for hire, wages including salary, reward, or commission in and in connection with any establishment and includes "apprentice" but does not include member of the employer's family. It also includes person employed in a factory who are not workers within the meaning of the Factories Act, 1948 (63 of 1948), and for the purpose of proceeding under this Act, include an employee, who has been dismissed, discharged or retrenched for any reason whatsoever.

9. On a plain reading of the aforesaid definition it would reveal that even persons employed in a factory by the inclusive clause in the second sentence of the definition are employees within the meaning of the Bihar Act. But it has to be noticed that two exceptions have been carved out from the category of such person, namely, (i) who are not "workers" within the meaning of the Factories Act; such workers do not come within the exclusive definition of the term "employees" and (ii) who are not working in managerial Capacity.

10. The definition of the term "worker" in Clause (I) and (m)(i) of Section 2 of the Factories Act is as follows:

(I) "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 works 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]:

(m) "factory" means any premises including the precincts thereof-

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; or

11. Therefore, reading both the provisions together, there would be no doubt that the "worker" as defined in the Factories Act, should be a person employed in the premises or precincts of the factory. It is not necessary that such workers must be directly connected with the manufacturing process, but those who are on any other work connected with or his work is incidental to the manufacturing

process in a factory are included. In this regard, reliance can be placed to a decision of the Supreme Court in the case of State of Uttar Pradesh Vs. M.P. Singh, S.P. Sabharwal and R.K. Lahri, . Relevant finding from the report is reproduced hereunder:

(5) X X X X

By the combined operation of these definitions, persons employed in any manufacturing process or in cleaning any part of the machinery or part of the premises used for the manufacturing process or any other kind of work, incidental to or connected with the manufacturing process or the subject of the manufacturing process are deemed to be workers in a factory. By the use in Section 2(I) of the Factories Act of the expression, employed in any other kind of work incidental to or connected with the subject of manufacturing process, not only workers directly connected in the manufacturing process, but those who are connected with the subject of manufacturing process in a factory are included....

12. In the case of Motipur Sugar Factory (Private) Ltd. v. Rikhdeo Prasad and Ors. 1970 LAB I.C. 474, more or less, identical question was discussed by this Court with respect to some of the employees of Sugar Factory. This was a case where the Presiding Officer, Labour Court, had passed an order u/s 26(2) of the Bihar Act with respect to an employee of the factory. The objection was raised that the Bihar Act does not apply to the establishment as the Respondent was a worker within the meaning of Section 2(I) of the Factories Act and not as defined u/s 2(4) of the Bihar Act. The Court held as follows:

6. X X X X

In my opinion, this is an erroneous interpretation of Section 2(4) of the Act. If a worker, as defined in Section 2(I) (sic) the Factories Act, is included in the first part of the definition, on a parity of reasoning, a person employed in a Factory who is not a worker within the meaning of the Factories Act, will be included with greater certainty.

13. In the case of Rohtas Industries Ltd. Vs. Shri Ramlakhan Singh and Others, the Supreme Court also on a plain reading of the definition of Sub-section (4) of Section 2 of the Bihar Act, observed in these words:

4. X X X X

On a plain reading of the definition aforesaid, it follows that even persons employed in a factory by the inclusive clause in the second sentence of the definition are employees within the meaning of the Bihar Act. But two exceptions have been carved out from the category of such persons, namely (1) "who are not workers within the meaning of the Factories Act"; such a worker does not come within the inclusive definition of the term "employee"; (2) "who are not working in managerial capacity". In other words, even a person employed in a factory and who is not a worker within the meaning of the Factories Act will not be an employee u/s 2(4) of the Bihar Act if he is working in a managerial

capacity....

14. On behalf of the State, a stand has been taken although the printing press has been registered under the Factories Act, but the establishment is certainly beyond the scope of the Factories Act. The workers engaged in such a factory are covered under the definition of Sub-section (2) of Section 4 of the Bihar Act. Therefore, the Inspecting Officer was perfectly justified in directing the management of the company to get it registered under Rule 3(7) of the Rules. According to the Respondents, clerks, accountants, stenographers, computer operators etc. engaged in the establishment of the company are not the workers within the meaning of Section 2(I) of the Factories Act. Therefore, even such employees are working in premises of the same factory for all practical purposes, they are not directly involved in the manufacturing process or production.

15. The Petitioner by filing a reply to the counter affidavit in paragraph 6, have given details of different categories of workers of the factory as well as nature of their work to satisfy that such categories of employees are the workers within the meaning of Section 2(I) of the Factories Act. It has been stated that all such employees about whom details have been furnished are engaged in such a work which is incidental or connected with the manufacturing process or the subject of the manufacturing process and, therefore, are "workers" within the meaning of the Factories Act.

16. Although a rejoinder on behalf of the Respondents to the aforesaid affidavit of the Petitioner has been filed by the Superintendent of Labour (Respondent No. 6) but while replying to paragraph 6, a bald statement, has been made that the company is unnecessarily trying to suppress relevant materials to avoid registration. It has been stated that the printing press in question although running in the same premises of the company, but it has got a separate building, where printing works are being carried out. Therefore, the employees of the printing press are covered within the meaning of Section 2(4) of the Bihar Act.

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" u/s 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. X X X X

The words "any premises including the precincts thereof" u/s 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.

20. In the result, this writ application is allowed and impugned orders are quashed, to the extent a direction was given to that Petitioners to get registration of the establishment under Sub-rule (1) of 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.