

(2015) 08 SC CK 0087

In the Supreme Court Of India

Case No : Civil Appeal Nos. 5874-5875 of 2015 (Arising out of S.L.P. (C) Nos. 1624-25 of 2014)

Mohan Singh and Others

APPELLANT

Vs

The Chairman Railway Board and Others

RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Factories Act, 1948 — Section 2, 4, 46

Citation : (2015) 9 AD (SC) 238 : AIR 2015 SC 3027 : (2015) 4 AJR 100 : (2015) 6 ALLMR 901 : (2015) 3 CDR 766 : (2015) 3 ESC 443 : (2015) 147 FLR 14 : (2015) 3 LJLR 503 : (2015) LabIC 3404 : (2015) 3 LLJ 513 : (2015) 3 LLN 298 : (2015) LLR 1009 : (2015) 4 PLJR 117

Hon'ble Judges : Vikramajit Sen, J; Prafulla C. Pant, J

Bench : Division Bench

Advocate : Dinesh Kumar Garg, Abhishek Garg, Dhananjay Garg and Deepak Mishra, for the Appellant; A.K. Panda, Sr. Adv., Ashok Kumar Panigrahi, S.K. Bajwa, S.T. Ahmad and Shreekant N. Terdal, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, J—Leave granted.

2. The legal nodus that arise in the present Appeals before us are whether the existing canteen at Moradabad Division of the Northern Railway i.e., the subject Canteen, is located in a "Factory" within the meaning of Section 46 of the Factories Act, 1948; and consequently, whether the services of the staff employed in the subject Canteen ought to be regularized. These Appeals have been preferred against the judgment passed by the Division Bench of the High Court of New Delhi in LPA No. 19 of 2012, whereby the Orders passed in Writ Petition No. 6582 of 2003 and Review Petition No. 670 of 2011 have been set aside and it has been held that the subject Canteen is a "Non Recognized and Non Statutory" canteen.

3. We shall briefly narrate the facts leading up to the present lis. The Appellants

are employed in the subject Canteen, which has been running within the precincts of the Divisional Railway Manager (hereinafter referred to as "the DRM"), Moradabad since 1940 and has been catering to more than 100 employees, (in fact, well over 500) since its establishment. In 1963, the Respondent No. 1, namely the Chairman, Railway Board, issued a Circular No. E(W) 63/GN 1-2 dated 09.07.1963 for setting up of canteens as a welfare measure, whenever and wherever the staff strength exceeds 100. The existing Staff Canteen, i.e. the subject Canteen continued to operate smoothly, even thereafter. It is the uncontroverted case of the Appellants that when the subject Canteen underwent severe financial losses in 1971, it was the Respondent No. 3, i.e. the DRM of Northern Railways, Moradabad Division, who decided to constitute a committee of three senior Railway Divisional Officers to examine whether the affairs of the subject Canteen could be taken over by the Railways. It was decided by the said committee that the affairs of the subject Canteen be revived; and an ad hoc committee comprising five Railway Officers, which was to be replaced later on by a regular management committee, be appointed to manage the affairs of the said Canteen. It was in these circumstances that the subject Canteen was formally taken over by the Respondent Railways with effect from 18.01.1972. Subsequently, Respondent No. 1 issued Circular No. E (W) 83 CN1-8 dated 13.04.1987 laying down that prior approval of the Railway Board would be mandatory for setting up of a new canteen as well as for increasing the staff strength of existing canteens. The Appellants assert that the mandate laid down in the Circular of 1987 was not applicable to the subject Canteen as it was validly operational since 1940, and was also in consonance with the Circular of 1963. Ergo, no prior approval was required to be taken from the Railway Board since the subject Canteen was not a new canteen. It appears that thereafter on 19.09.1996, Respondent No. 2, the General Manager of Northern Railways wrote a letter to the Railway Board requesting it to accord recognition to the subject Canteen in the interest of the welfare of the employees. However, vide Order dated 9.09.2002, the Ministry of Railways rejected this request on the premise that if recognition were to be granted to the subject Canteen, the existing staff would nevertheless not be absorbed automatically, and they would have to compete with other eligible candidates. The Ministry then ordered status quo to be maintained in respect of the subject Canteen. The said proposal was thereafter discussed in the Permanent Negotiating Machinery (PNM) meeting held on 22.12.2003, wherein it was decided that since the Railway Board had already rejected the proposal for recognition due to the changed priorities of Railways and cutting down of non-planned expenditure, the proposal for recognition of any canteen under the provisions of the Factories Act, 1948, or the Railway Manual could not be considered.

4. Aggrieved thereby, the Appellants filed a writ petition before the Delhi High Court, seeking directions to the Railways to recognize the subject Canteen and regularize the services of the PS, who were the then Canteen staff, as employees of Railways. The learned Single Judge, relying heavily upon the view of this Court

in M.M.R. Khan and others etc. Vs. Union of India and others, etc., AIR 1990 SC 937 : (1991) 61 FLR 271 : (1990) 3 JT 1 : (1990) 1 SCALE 324 : (1990) 1 SCC 191 Supp : (1990) SCC 191 Supp : (1990) 1 SCR 687 , allowed the Writ Petition on 13.01.2011 and held that since the subject Canteen at Moradabad has been operational for over seventy years, by then catering to more than 900 employees, and in the absence of any other canteen in the Moradabad Division, the Railways could not be permitted to take advantage of their failure to comply with the requirements of Section 46 of the Factories Act and treat this Canteen at Moradabad as a "Non-Statutory Canteen". Against the Order of the learned Single Judge, a Review Petition was preferred by the Respondents which was dismissed on 2.12.2011. The Respondents then filed an appeal contending, inter alia, that the subject Canteen was a "Non-Statutory and Non-Recognized" Canteen and that it could not be treated as a "Statutory Canteen" under the Factories Act, 1948 as no manufacturing process was being carried on in the DRM Office at Moradabad. In the appeal, the Division Bench, vide the impugned judgment dated 16.03.2012, reversed the decision of the learned Single Judge. It held that the provisions of Section 46 of the Act would not get attracted in the instant case only because the number of the persons employed in the DRM Office, Moradabad, exceeds two-hundred fifty, unless the concerned establishment squarely fell within the definition of "Factory" as defined Under Section 2(m) of the Act. The Division Bench acknowledged that the dictum laid down by this Court in M.M.R. Khan has become locus classicus on the subject of regularisation of employees of several canteens being run in the different Railway establishments. All the same, it added that in order to avail the benefit emanating from M.M.R. Khan the Appellants would have to prove the sine qua non of a "Statutory Canteen", i.e. that the subject Canteen is being run in a premises which is a factory within the four corners of Section 46 of the Act. The Division Bench then took note of Section 46 of the Act, which enjoins that "manufacturing process" must, inter alia, be carried on in the premises of a "factory".

5. We shall, first, consider the concomitants of a "Non-Statutory and Non-Recognised Canteen", which aspect has been duly cogitated upon by this Court in M.M.R. Khan where this Court has adumbrated the basic characteristics of a "Non-Recognized and Non-Statutory Canteen" thus-

38. (iii) Non-statutory Non-recognised Canteens: The difference between the non-statutory recognised and non-statutory non-recognised canteen is that these canteens are not started with the approval of the Railway Board as required under paragraph 2831 of the Railway Establishment Manual. Though, they are started in the premises belonging to the railways they are so started with the permission of the local officers. They are not required to be managed either as per the provisions of the Railway Establishment Manual or the Administrative Instructions (supra). There is no obligation on the railway administration to provide them with any facilities including the furniture, utensils, electricity and water. These canteens are further not entitled to nor are they given any subsidies

or loans. They are run by private contractors and there is no continuity either of the contractors or the workers engaged by them. More often than not the workers go out with the contractors. There is further no obligation cast even on the local offices to supervise the working of these canteens. No rules whatsoever are applicable to the recruitment of the workers and their service conditions. The canteens are run more or less on ad-hoc basis, the railway administration having no control on their working neither is there a record of these canteens nor of the contractors who run them who keep on changing, much less of the workers engaged in these canteens. In the circumstances we are of the view that the workers engaged in these canteens are not entitled to claim the status of the railway servants.

6. It cannot be controverted that the subject Canteen has been running since 1940 within the precincts of the office of the DRM, Moradabad and has been under the direct control and supervision of the DRM. The Management Committee appointed for administration of the subject Canteen comprises office bearers of the Canteen Management Committee, duly elected in union elections held from time to time. Further, no private contractor or co-operative society has ever been engaged for running or operating the subject Canteen. The Appellants contend that the joining and leaving the canteen staff has always been sanctioned and regulated by the Controller, i.e. the Assistant Personnel Officer of the Northern Railways. The prices of the food items supplied in the subject Canteen as well as the salaries of the staff are also fixed by the said Assistant Controller Personnel Officer. Even the renovation of the Canteen, in 2005, was carried out at the directions of the Northern Railways, which bore all the expenses incurred in this exercise. It further appears that the Appellants have been provided with uniforms, medical aid, free travelling passes, residential accommodations, privileged ticket orders etc. by the Railways. Thus, it seems amply clear from this factual matrix that the Respondents have remained in control of the management and operation of the subject Canteen.

7. For a canteen to qualify as a "Recognized Canteen" it is imperative to obtain the approval of the Railway Board. Since the proposal for approval, admittedly, had been rejected by the Railway Board vide Order dated 9.9.2002, it follows that the subject Canteen does not qualify as a "Recognized Canteen". It thus, becomes crucial for us to examine whether the subject Canteen is a "Statutory Canteen" as postulated in the Factories Act, 1948.

8. Section 46 of the Factories Act, 1948 which provides for setting up of a "Statutory Canteen" reads as follows:

46. Canteens.-

(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for-

(a) the date by which such canteen shall be provided;

(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) the foodstuffs to be served therein and the charges which may be made thereof;

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;

(dd) the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;

(e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed, of the power to make rules under Clause (c)

9. The statute does not exempt factories belonging to the Central Government from its reach; Parliament obviously expected them to conform to what it perceived as essential to welfare of the workforce. It is evident from a perusal of the definition of canteens and factories that Government factories have not been conceived of as beyond the concept of a "factory", nor do we find any justification for it to be otherwise. Thus, what emerges from the above provision is that when an establishment is a "factory" within the meaning of Section 2(m) of the Act, and there are more than two-hundred fifty workers employed therein, the Occupier is obliged to set up a canteen and conform to the statutory rules made in that behalf. Section 2(n) of the Factories Act, 1948 defines "Occupier" of a factory "as a person who has ultimate control over the affairs of the factory". Sub-section (iii) of Section 2(n) states that "in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier". It cannot be controverted that each of the five units of the Northern Railways, including the Moradabad Division, is managed by a respective Divisional Railway Manager. Thus, for the purposes of Section 2(n) of the Act, it can be fairly inferred that the DRM, by virtue of being in control of the affairs of Moradabad Division, should be deemed to be the "Occupier" of that unit of the Northern Railways.

10. Learned Counsel for the Respondents has duly admitted that Moradabad Division is a part of the Northern Railways, but contends that the whole of Northern Railways cannot be declared as "Factory". We are presently concerned only with the Moradabad DRM, which may well be dissimilar to the other Divisional Offices of the Northern Railways, where manufacturing activity is absent. Therefore, we do not find merit in the said argument. Section 4 of the

Factories Act, 1948 gives power to the State Government to, either suo motu or upon receiving an application in this behalf by an occupier, declare different departments to be treated as separate factories. However, no such application can be said to have been made by the Respondents or by the Northern Railways. In the absence of any clear declaration in this respect, we cannot but assume that Moradabad Division is a unit of Northern Railway and DRM is its occupier within Section 2(n) of the Factories Act, 1948.

11. Further, it also appears that providing for a staff canteen was felt necessary by the Respondents themselves and several representations were made to the Railway Board from time to time for recognition of the subject Canteen. Such conduct or approach is to be expected of every model employer, as the Government must be. It is for this very reason that the Divisional Personnel Officer made the first request to the Divisional Superintendent for recognition of the subject Canteen on 12.06.1972. Thereafter, the Respondent No. 2 addressed another letter to the Respondent No. 1 on 19.09.1996, whereby it again stressed that running of a recognized canteen in Moradabad is an imperative and important staff amenity. It is evident that the Respondents were aware of the need for setting up and continuing a recognised canteen.

12. The Factories Act, 1948 is a social legislation enacted for the welfare of the workers. It deals with matters connected with the health, safety, welfare, working hours of the workers, employment of young persons and leave to be granted to workers. The idea behind providing Statutory Canteen in a Factory is to create efficient, healthy, loyal and satisfied labor force for the organization. We are of the view that if such a responsibility has been cast on an occupier of a Factory under the law, it remains obligatory upon DRM, Moradabad to maintain a statutory canteen so long as the staff strength exceeds two-hundred and fifty.

13. Having discussed and noted the above statutory provisions, we also find it necessary to examine the question whether the Moradabad Division of the Northern Railways can be considered a factory in itself Under Section 2(m) of the Factories Act, 1948. To answer the said question, we must examine the definition of "factory" under the Factories Act, 1948.

Section 2(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

(ii) whereon twenty 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 without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.

14. It can be inferred from above that the following ingredients are mandatory to constitute a premises including its precincts as "factory"-

- i. Work i.e. manufacturing process should be carried on within the premises;
- ii. If the manufacturing process is being carried on with or without the aid of power, the number of workers required to constitute a factory differs as follows:
 - a. With the aid of power-10 or more workers
 - b. Without the aid of power-20 or more workers;

So far as the second requirement is concerned, it cannot be disputed that the subject Canteen is situated within the precincts of the office of the DRM, Moradabad and more than 1000 workers are working in those precincts. The crucial question that arises in the present case then is whether any "manufacturing process" is being carried on within the premises of the DRM Office, Moradabad. Manufacturing process has been defined Under Section 2(k) of the Act as: Any process for-

- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal;
- (ii) pumping oil, water, sewage or any other substance; or
- (iii) generating, transforming or transmitting power; or
- (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or
- (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- (vi) preserving or storing any article in cold storage.

15. The learned Counsel for the Respondent contends that no manufacturing activity is carried out within the DRM Office of Moradabad, where the subject Canteen is located. We, however, do not accept this contention. It cannot be disputed that railway wagons are repaired and maintained at the Moradabad Division. It is also not disputed that the Moradabad Division carries on other activities such as repairing of faulty signals, sanitation systems, loading and unloading of goods, supply of power continuously for railway tracks, railway station etc. Thus, it has perforce to be inferred that manufacturing process is being carried out at the Moradabad Division.

16. The more important question that arises is whether the said manufacturing activities are carried on within the premises of DRM Office, Moradabad. Black's Law Dictionary, 5th Edition defines "Premises", so far as estates and property are concerned, as lands and tenements. With regard to the Worker's Compensation Act, "premises of employer" is not restricted to permanent site of the employer's

business nor to property owned or leased by him but contemplates any place under the exclusive control of the statutory employer where his normal business is conducted or carried out." In *Kamla Devi Vs. Laxmi Devi*, AIR 2000 SC 1640 : (2000) 6 JT 498 : (2000) 4 SCALE 768 : (2000) 5 SCC 646 : (2000) 1 SCR 330 Supp : (2000) 2 UJ 1154 : (2000) AIRSCW 1829 : (2000) 4 Supreme 627 , in the context of the Delhi Rent Control Act, this Court has held that even an open plot of land so long as it has some structures on it, will fall within the meaning of "premises". Extrapolating from these decisions, we are in no manner of doubt that the DRM Office of Moradabad Division along with all the appurtenant lands, yards, etc. are "premises" within the contemplation of the Factories Act. In *Ardeshir H. Bhiwandiwalla Vs. The State of Bombay*, AIR 1962 SC 29 : (1961) 2 FLR 586 : (1961) 2 LLJ 77 : (1961) 3 SCR 592 , the Constitution Bench explained that "premises including precincts" does not necessarily mean that the premises must always have precincts. Even buildings need not have any precincts. The word "including" is not a term restricting the meaning of the word "premises" but is a term which enlarges the scope of the word "premises". A comprehensive reading of the Factories Act, 1948 clearly shows that the word "premises" can refer to an entire area, which may have several separate buildings, within it, or which may correspond to an open yard. Further, an important point to consider is that the definition of "manufacturing process" does not mandate that the manufacturing activities should be carried on in one building alone. What this definition really deals with is the nature of the work done and not with where that work is to be done. It must, therefore, be held that all the requirements of the term "factory" as defined Under Section 2(m) of the Act are satisfied on the facts of the present case. Thus, the premises of DRM, Moradabad must be also treated as a factory under the Factories Act, 1948 in which case Moradabad Canteen shall ipso facto corresponded to a "Statutory Canteen" within the meaning of Section 46 of the Act.

17. Once that conclusion is reached, the result with respect to status of workers employed therein becomes obvious. In *M.M.R. Khan*, this Court has held-"Since in terms of the Rules made by the State Governments Under Section 46 of the Act, it is obligatory on the Railway Administration to provide a canteen, and the canteens in question have been established pursuant to the said provision there is no difficulty in holding that the canteens are incidental to or connected with the manufacturing process or the subject of the manufacturing process. The provision of the canteen is deemed by the statute as a necessary concomitant of the manufacturing activity. Paragraph 2829 of the Railway Establishment Manual recognises the obligation on the Railway Administration created by the Act and as pointed out earlier paragraph 2834 makes provision for meeting the cost of the canteens. Paragraph 2832 acknowledges that although the Railway Administration may employ anyone such as a Staff Committee or a Co-operative Society for the management of the canteens, the legal responsibility for the proper management rests not with such agency but solely with the Railway Administration.....We are, therefore, of the view that the employees in the

statutory canteens of the Railways will have to be treated as Railway servants. Thus the relationship of employer and employee stands created between the Railway Administration and the canteen employees from the very inception."

18. Therefore, in the light of the settled principle enunciated hereinabove, we hold that the subject Canteen is a "Statutory Canteen" under the Factories Act, 1948 and that the learned Single Judge had arrived at the correct conclusion. In our opinion, the Division Bench of the High Court was not correct in taking a contrary view. We, therefore, allow these Appeals. We set aside the impugned judgment passed by the High Court, and direct the Respondents to treat the subject Canteen at Moradabad as a Statutory Canteen either Under Section 46 of the Act or the relevant clauses of the Indian Railway Establishment Management. However, so far as the Appellants are concerned, we find it difficult to condone or ignore the fact that they were not appointed as per the regular recruitment procedure. To pass an order regularizing the services of all workers employed therein would necessarily imply ratification of appointments given outside the Constitutional scheme. We, therefore, direct the Respondents to consider regularizing the services of the Appellants presently serving as canteen workers in consonance with the principles laid down in Secretary, State of Karnataka and Others Vs. Umadevi and Others, AIR 2006 SC 1806 : (2006) 6 CompLJ 1 : (2006) 4 JT 420 : (2006) 2 LLJ 722 : (2006) 4 SCALE 197 : (2006) 4 SCC 1 : (2006) 3 SLJ 1 : (2006) AIRSCW 1991 : (2006) 3 Supreme 415 and take requisite action within six months of the receipt of this Judgment. Further, as and when the subject posts fall vacant the Respondents shall be bound to fill the posts by a regular process of selection. The Appellants in the present case shall be allowed to compete in the regular recruitment and the Respondents shall grant to them appropriate age relaxation as well as grant proper weightage for their having worked in the subject Canteen.

19. There cannot be any cavil that the necessity for canteen amenities to be available where more than 250 workmen are engaged, is an essential facet of human or labour rights. Managements and employers are duty bound to provide these basic facilities.

20. Stay granted by this Court on 28.03.2014 stands vacated. There shall be no order as to costs.