

(1981) 08 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 129 of 1981

M.P. Electricity Board, Jabalpur

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 19-08-1981

Acts Referred:

Factories Act, 1948 — Section 2(m)

Citation : (1982) JLJ 1

Hon'ble Judges : G.P. Singh, C.J.; Faizanuddin, J

Bench : Division Bench

Advocate : S.C. Pandey, for the Appellant; M.V. Tamaskar, Govt. Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, C.J.—By this petition under Article 226 of the Constitution, the petitioner, Madhya Pradesh Electricity Board, challenges the levy of registration/licence fee on its sub-stations in accordance with Schedule C to Rule 6 of the Madhya Pradesh Factories Rules, 1962. Schedule C was added by notification dated 10th February, 1978. The petitioner challenges the vires of this notification in so far as it covers the sub-stations. The petitioner also claims refund of the licence fee that it paid under protest for the years 1979, 1980 and 1981.

2. The petitioner generates electricity at Korba, Amarkantak, Sarni and Gandhisagar. These are the generating stations of the petitioner. The electricity is initially generated at 11 K.V. and is then stepped up to 220 K.V. and 132 K.V. The electricity so generated and stepped up is transmitted from the generating stations to sub-stations which are mentioned in Annexure C to the petition. In the sub-stations the electricity is stepped down to 132 K.V., 33 K.V. and 11 K.V. according to the needs of the consumers and then transmitted to them. These sub-stations were formerly registered as factories and there was no dispute as the licence fee was low. The dispute arose because by the impugned amendment of the Factories Rules the licence fee was considerably increased.

3. Rule 4 of the Factories Rules provides that no manufacturing process shall be carried on in any factory unless such factory is or is deemed to be duly licensed. Rules 5 and 6 then make provisions for grant of licence and registration. The Schedule attached to Rule 6 contains the scales of fee payable by different factories. We are here concerned with Schedule C which was inserted by the notification dated 10th February, 1978. The second column of this schedule prescribes graded fee for generating stations and the third column for transforming including conversion stations. Fee for all transmitting stations is fixed at Rs. 200 per year. The petitioner contends that no manufacturing process is carried on in sub-stations which are merely transforming and transmitting stations and, therefore, they are not factories and no fee can be prescribed for their registration.

4. The definition of Factory is contained in section 2(m) of the Factories Act, 1948. The carrying on of a manufacturing process is an essential requisite of a factory. Section 2(k) defines manufacturing process. In so far as relevant for our purposes, "manufacturing process" as defined here means any process for "generating, transforming or transmitting power."

5. In the sub-stations which are mentioned in Annexure C, electricity is not generated. In these sub-stations, as mentioned above, electricity is transformed and then transmitted to the consumers. The question before us is whether this amounts to manufacturing process and whether the substations can be described as factories. The answer to this question, in our opinion, is concluded in favour of the petitioner by the decision of the Supreme Court in *Workmen of Delhi Electric Supply Undertaking Vs. The Management of Delhi Electric Supply Undertaking*, . In that case the point for decision was whether the sub-stations and zonal stations of the Delhi Electricity Undertaking were factories within the meaning of Factories Act. A reading of paragraphs 15 and 18 of that judgment will go to show that the sub-stations and zonal stations were created to reduce the voltage and do other incidental acts for the purpose of ensuring supply of power to consumers. The processes of transforming and transmitting electricity were thus being undertaken in the sub-stations and the zonal stations with which the Supreme Court was concerned in that case. The Supreme Court also noticed the definition of "manufacturing process" as contained in section 2(k) of the Act. The decision of the Court was that these sub-stations and zonal stations did not constitute factories within the said definition for no manufacturing process was undertaken in them. Reading the definition of "manufacturing process" in the light of the decision of the Supreme Court, in our opinion, the word "or" as occurring therein must be read as "and". In other words, to satisfy the definition of "manufacturing process", there should be the process of generating, transforming and transmitting of power. The process of merely transforming and / or transmitting is not sufficient to bring a case within the definition. We cannot read the definition disjunctively for that would go against the decision of the Supreme Court which found absence of any manufacturing process in the sub-stations and zonal stations of Delhi although the process of transforming and

transmitting power was carried on in them. In the sub-stations of the petitioner only transforming and transmitting processes are carried on. There is complete absence of any generating process in the sub-stations. The processes undertaken in the sub-stations do not fall within the definition of manufacturing process and so these sub-stations are not factories and do not require any registration or licence under the Act.

6. The learned Government Advocate referred to us section 2(11-A) of the Electricity (Supply) Act, 1948, which was added by Act No. 115 of 1976. This provision only defines sub-station as follows:

(11-A) "sub station" means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers, convertors, switchgear, capacitors, synchronous condensers, structures, cables and other appurtenant equipments and any building used for that purpose and the site thereof, a site intended to be used for any such purpose and any buildings used for housing the staff of the sub-station.

The definition is consistent with the concept of a sub-station that no generating process is undertaken therein. It has no effect on the definition of "factory" or "manufacturing process" as contained in the Factories Act.

7. A perusal of Schedule C which has been added in the Rules will go to show that licence fee has been made payable also on such stations where only transforming or transmitting process is carried on. As earlier stated by us, such stations cannot be described as factories. The power conferred on the State Government to make rules u/s 6 of the Factories Act is in respect of licensing and registration of factories. Rules cannot be made in respect of establishments which are not factories. The third column of Schedule C and clause (b) of the same Schedule, which make transforming and transmitting stations also liable for payment of licence fee, are, therefore, in excess of the rule making power and invalid and void.

8. The amount of licence fee, in accordance with Schedule C on the sub-stations was paid by the petitioner under protest. As that part of the Schedule under which the licence fee was collected was beyond the rule making power of the State Government, there is no legal basis for this collection and the State Government must refund the amount of fee to the petitioner. It is not in dispute that the petitioner paid Rs. 63,837.50, Rs. 65,400 and Rs. 73,000 as fee for the sub-stations under Schedule C for the years 1979, 1980 and 1981 respectively.

9. The petition is allowed. We declare Column No. 3 of clause (a) of Schedule C and clause (b) of the same Schedule to be ultra vires and void. We order the State Government to refund the amount of fee collected under that Schedule in respect of the sub station from the petitioner for the years 1979, 1980 and 1981. There will be no order as to costs of this petition. The security amount be refunded to the petitioner. The learned Government Advocate to appeal to the Supreme Court which is refused.