

(2015) 08 BOM CK 0346

In the Bombay High Court

Case No : Ordinary Original Civil Jurisdiction Writ Petition No. 380 Of 2014

Ms. Shashikaran R. Shrivastava c/o. Ashwini, Thane

APPELLANT

Vs

M/s. Bennett Coleman & Co. Ltd.

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 3(5)
Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 — Section 2(f)

Citation : (2017) 2 CLR 65

Hon'ble Judges : Smt. R.P. Sondur Baldota, J.

Bench : Single Bench

Advocate : Mr. Sanjay Sanghvi, Senior Counsel a/w Ms. Jane Cox i/by Mr. R.A. Amonkar, Advocate, for the Petitioner; Mr. Sudhir Talsania, Senior Counsel a/w Mr. Sagar Sheth I/by Mr. Vijay Vaidya, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Smt. R.P. Sondurbaldota, J.—These petitions filed under Article 226 of the Constitution of India raise the following common question of law ;

"Whether a Working Journalist within the meaning of Section 2(f) of The Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 ("The W.J. Act", for short) is an employee within the meaning of Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act ("The PULP Act", for short)."

2. The petitioners are working as Sub-Editors with the same employer i.e. the respondent to the two petitions. They filed Complaint (ULP) No. 17 of 2004 and Complaint (ULP) No. 520 of 2005 respectively alleging unfair labour practices on the part of the respondent under Items - 5, 9 and 10 of Schedule-IV of the PULP Act. The respondent contested the complaints, inter alia, on the ground of their maintainability. By the orders impugned in the petitions, the Industrial Tribunal

dismissed the complaints holding that the same were not maintainable as the petitioners are not employees within the meaning of Section 3(5) of the PULP Act. Considering the nature of the question to be addressed in this petition any further reference to the facts alleged in the complaints is not required.

3. Admittedly, the petitioners are the working journalists governed by the W.J. Act. Since they seek to resort to the remedies under the PULP Act, they need to establish that they are covered by the definition of "employee" under the PULP Act. The definition thereunder reads as under :-

"employee", in relation to an industry to which the Bombay Act for the time being applies, mean an employee as defined in clause (13) of section 3 of the Bombay Act, and in any other case, means a workman as defined in clause (s) of Section 2 of the Central Act, and a sales promotion employee as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976."

The definition shows that the persons covered by the PULP Act are

(i) every person who is an employee as defined under Section 3(13) of the Maharashtra Industrial Relations Act, 1946.

(ii) every person who is a "workman" as defined under Section 2(s) of the Industrial Disputes Act, 1947 and

(iii) a sales promotion employee as defined under Section 2(d) of the Sales Promotion Employees (Conditions of Service) Act, 1976.

Thus on plain reading of the provision the petitioners are not covered by the definition of employee under the PULP Act. Mr. Singhvi, the learned advocate appearing for the petitioners, however submits that, on two counts, the petitioners could be and ought to have been considered as "employee" by the Industrial Tribunal to enable them to take recourse to the PULP Act. His first argument is that a working journalist is an employee within the meaning of the PULP Act, by operation of law. His second argument is that the actual work done by the petitioners would place them within the definition of Section 2(s) of the Industrial Disputes Act, 1947 ("I.D. Act", for short). This aspect not having been examined by the Industrial Tribunal, the matter deserves a remand.

4. Mr. Sanghavi relies upon the decision of the Apex Court in *Express Newspaper Ltd. v. Union of India* reported in AIR (1958) Supreme Court, page 578, to focus upon and underline the significance of the position held by a working journalist in the society. He refers to the following part of para 10 of the decision :

" A journalist occupies a responsible position in life and has powers which he can wield for good or evil. It is he who reflects and moulds public opinion. He has to possess a certain amount of intellectual equipment and should have attained a certain educational standard without which it would be impossible for him to perform his duties efficiently. His wage and his conditions of service should

therefore be such as to attract talent. He has to keep himself abreast of the development in different fields of human activity - even in such technical subjects as law, and medicine. This must involve constant study, contact with personalities and a general acquaintance with world's problems. "

He submits that the Central Government had set up Press Commission to enquire into the conditions of Press in India. The report of the Commission resulted into the W.J. Act. Mr. Talsania, the learned Senior Counsel for the respondent points out that the Commission set up by the Central Government was not exclusively for looking into the status and working conditions of the journalists alone. It was set up for the Press in India as a whole, with a view to improving it's place, status and functioning in the new democratic set up. One of the terms of reference to the Press Commission was to examine, "the method of recruitment, training, scales of remuneration, benefits and other condition of employment of working journalists, settlement of disputes affecting them and factors which influence the establishment and maintains high professional standards....". He also points out that the picture of journalists drawn at para 10 of the decision is the position of a journalist as characterised by the Commission. The Apex Court has merely reproduced the same by way of narration.

5. Mr. Sanghavi submits that Section 3(2) of the W.J. Act creates a legal fiction whereby a working journalist is to be treated as a workman for all purposes under the I.D. Act. The W.J. Act having been enacted in the year 1955 was already in operation when the PULP Act was enacted in the year 1971. Since the workman under the I.D. Act is covered by the definition of "employee" under the PULP Act it must be presumed that the State Legislature intended to cover working journalist under the PULP Act. Mr. Sanghavi relies upon decision of the Apex Court in *Kasturi & Sons (Private) Ltd. v. Sallvateeswaran* and another reported in (1958) I L.L.J. Page 527. In this case a working journalist had made an application under Section 17 of the W.J. Act to the Labour Minister of State of Bombay for claiming certain amount from the employer. On receiving the application, the State of Bombay made nomination of an officer as an authority under Section 17 of the W.J. Act. The employee while disputing the claim on merit had also contended that the authority appointed had no jurisdiction to consider the application of the working journalist. The contention of the employer was that Section 17 of the W.J. Act provides only for a mode of recovery of any money due to a working journalist. It does not empower the State Government or the authority specified by the State Government to act as a forum for adjudicating upon the merits of the disputed claim. That being so the authority appointed had no jurisdiction to deal with the merits of the claim of the working journalist. The authority rejected the objection to jurisdiction, but the Apex Court upheld the objection to the jurisdiction. The relevant observations are :

"It is significant that the State Government of the specific authority mentioned in Section 17 has not been clothed with the normal powers of a Court or a tribunal to hold a formal enquiry. It is true that Section 3, Sub-section. (1) of the Act

provides for the application of the Industrial Disputes Act, 1947, to or in relation to working journalists subject to Sub-section. (2) ; but this provision is in substance intended to make working journalists workmen within the meaning of the main Industrial Disputes Act. This section cannot be read as conferring on the State Government or the specified authority mentioned under Section 17 power to enforce attendance of witnesses, examine them on oath, issue commission or pass orders in respect of discovery and inspection such as can be passed by the boards, courts or tribunals under the Industrial Disputes Act. It is obvious that the relevant provisions of Section 11 of the Industrial Disputes Act, 1947, which confer the said powers on the conciliation officers, boards, Courts and tribunals, cannot be made applicable to the State Government or the specified authority mentioned under Section 17 merely by virtue of Section 3(1) of the Act."

Mr. Sanghavi specifically relies upon the statements underlined from the above para to submit that a working journalist is a workman within the meaning of the Industrial Disputes Act. At the same time Mr. Sanghavi concedes that the above observations of the Constitutional Bench have been explained by the another Constitutional Bench in H.R. Adyanthaya and others v. Sandoz (India) Ltd. and others reported in (1994) 5 Supreme Court Cases 737. The question under consideration before the Apex Court in that decision was whether the "Medical Representatives" as they are commonly known are workmen according to the definition of "workmen" under Section 2(s) of the I.D. Act. The clarification as regards the observations in the earlier decision stated at para 38 reads as under :

"38. While answering the question in the negative, the Court first observed that it is significant that the State Government or the specific authority mentioned in Section 17 had not been conferred with the normal powers of a court or a tribunal to hold a formal inquiry. It then proceeded to make the aforesaid observation. It is thus clear that the use of the expression "in substance" in the said context was not so much for holding that the working journalists were workmen within the meaning of ID Act but to indicate that since Section 3(1) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act applied the provisions of the ID Act to the working journalists for all other purposes, the working journalists were for the purpose workmen within the meaning of the ID Act. This is apart from the fact that the construction suggested on behalf of the workmen resting their case on the provisions of Section 6(2) of the SPE Act would be against the rules of interpretation."

One of the arguments before the Court was that since the medical representatives perform duties of skilled and technical nature, they should be considered as workmen within the meaning of the said definition under the I.D. Act. The Apex Court rejected the contention with observations that the connotation of the skill in the context in which it is used in the definition of workmen will not include the work of sales promotion of employee such as the Medical representative. That word has to be construed ejusdem generis and thus

construed will mean skilled work, whether manual or nonmanual, which is of a genres of the other type of work mentioned in the definition. The work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition. Hence, the contention that the Medical representatives were employed to do skilled work within the meaning of the said definition, had to be rejected. As regards the technical nature of their work, the Apex Court observed that the same had been expressly rejected by the Apex Court in it's another decision in *Burmah Shell Oil Storage & Distribution Co. of Inida v. Burmah Shell Management Staff Association & ors.* Reported in (1970) 3 Supreme Court Cases, page 378. It further observed that if the interpretation of the terms unskilled and skilled were divorced from "manual" to treat them as independent categories, nothing would have been easier for the legislature than to amend the definition of "workmen" by stating that any person employed in connection with any operation of the establishment other than those specifically excepted as a workman.

6. But Mr. Sanghavi submits that even while clarifying the Constitutional Bench has held that working journalists are "workmen" within the meaning of the I.D. Act for "all purposes". Such interpretation would be misreading of the above observations by ignoring word "other" from the sentence. The words used therein are "for all other purposes" and not "for all purposes".

7. Mr. Talsania points out that the view in *Burma Shell* (supra) is found reiterated in the subsequent decision of the Apex Court in *T.P. Srivastava v. M/s. National Tobacco Co. of India Limited* reported in (1992) 1 Supreme Court Cases 281. While deciding the case of a Section Salesman employed for canvassing and promoting sales of company's product, the Apex Court observed :

"In order to come within the definition of workman under the Industrial Disputes Act as it stood in the year 1973 when the appellant's service was terminated, the employee has to be under the employment to do the work of one of the types of work referred to in the section i.e. manual, skilled and/or clerical in nature. The finding of the Tribunal on the nature of the work is a finding on a question of fact and it is also borne out by the document produced before the Labour Court. It is seen from the facts found that the appellant was employed to do canvassing and promoting sales for the company. The duties involve the suggesting of ways and means to improve the sales, a study of the type or status of the public to whom the product has to reach and a study of the market condition. He was also required to suggest about the publicity in markets and melas, advertisements including the need for posters, holders and cinema slides. These duties do require the imaginative and creative mind which could not be termed as either manual, skilled, unskilled or clerical in nature. The supervising work of the other local salesmen was part of his work considered by the Tribunal as only incidental to his main work of canvassing and promotion in the area of his operation. Such a person cannot be termed as a workman is also the ratio of the decision of this Court in *Burmah Shell Oil Storage and Distribution Company*

v. *Burmah Shell Management Staff Assn., D.S. Nagraj v. Labour Officer, Kurnool, J and J Dechane Distributors v. State of Kerala.*"

8. In the circumstances in my considered opinion, it can not be said that the W.J. Act creates a fiction whereby working journalists are to be treated as a workman for all purposes under the I.D. Act.

9. The second and alternate argument of Mr. Sanghavi is that as per Section 3(1) of the W.J. Act, all subsequent amendments of the I.D. Act will apply to working journalists as they apply to other workmen covered under the I.D. Act. He argues that Section 3(1) of the W.J. Act amounts to legislation by reference and in a matter of legislation by reference, the subsequent amendments in the Act referred to must be read into the referring Act also. The provision of Section 3 of W.J. Act reads as under :

3. Act 14 of 1947 to apply to working journalists -

(1) The provisions of the Industrial Disputes Act, 1947 (14 of 1947), as in force for the time being, shall, subject to the modification specified in sub-section (2), apply to, or in relation to, working journalists as they apply to, or in relation to, workmen within the meaning of that Act.

(2) Section 25F of the aforesaid Act, in its application to working journalists, shall be construed as if in clause (a) thereof, for the period of notice referred to therein in relation to the retrenchment of a workman, the following periods of notice in relation to the retrenchment of a working journalist had been substituted namely :-

(a) six months, in the case of an editor, and

(b) three months, in the case of any other working journalist.

He argues that the PULP Act is in the nature of an amendment to the I.D. Act and therefore the PULP Act must apply to working journalists. According to him, Section 20(2) of the PULP Act actually amends the I.D. Act and the amendments to the I.D. Act are set out in Schedule-I of the PULP Act. These amendments apply to all industries in the State of Maharashtra for which the State Government is the appropriate Government. Therefore the same will apply to the respondent undertaking.

10. Mr. Sanghavi relies upon decision of the Apex Court in *Bharat Co.op. Bank (Mumbai) Ltd. v. Co.op. Bank Employees Union* reported in (2007) 4 Supreme Court Cases, page 685 to submit that in a matter of legislation by reference, the subsequent amendments to the Act referred to must be read into the referring Act. In the decision cited, the main question arising for determination before the Apex Court was, "whether the amendments to the Banking Regulations Act, particularly, insertion of Section 56 in the new format with effect from 3rd March, 1966, after the insertion of the definition of "Banking Company" in the I.D. Act will apply mutatis mutandis to the matter governed by the I.D. Act". The

petitioner before the Apex Court had contended that the reference in the I.D. Act to the Banking Regulations Act was for the limited purpose of identifying one kind of Banking institution, it brings in. The respondent before the Apex Court had contended that the doctrine of statutory incorporation squarely applied to that case as the definition of "Banking Company" in the I.D. Act had been bodily lifted from the Banking Regulation Act. After considering the distinction between legislation by incorporation and legislation by mere reference or citation of one statute in another, the Apex Court held that the plain language of Section 2(bb) of the I.D. Act makes the intention of the legislature very clear that the reference to Section 5 of the Banking Companies Act in that provision is an instance of legislation by incorporation and not legislation by reference. Consequently subsequent amendment in the Bank Regulation Act would have no effect on the expression Banking Company as defined in Section 2(bb) of the I.D. Act. The observations from this decision stressed upon by Mr. Sanghavi are that in case of legislation by reference, a modification, repeal and reenactment of the statute that is referred will also have effect on the statute in which it is referred.

11. The second decision relied upon by Mr. Sanghavi in this connection is *The State of Madhya Pradesh v. M.V. Narasimhan*, reported in AIR (1975) Supreme Court, page 1835. In this decision the Apex Court was considering incorporation of definition of public servant contained in Section 21 of the Indian Penal Code in Prevention of Corruption Act, 1947. The Apex Court considered the doctrine of incorporation by reference to the earlier legislation and the effect of amendments to the statute referred, to lay down the following propositions of law at para 16 of the decision. The same reads as under :

"16. On a consideration of these authorities, therefore, it seems that the following proposition emerges :

Where a subsequent Act incorporates provisions of a previous Act then the borrowed provisions become an integral and independent part of the subsequent Act are totally unaffected by any repeal or amendment in the previous Act. This principle, however, will not apply in the following cases :

(a) where the subsequent Act and the previous Act are supplemental to each other.

(b) where the two Acts are in *pari materia* ;

(c) where the amendment in the previous Act, if not imported into the subsequent Act also, would render the subsequent Act wholly unworkable and ineffectual ; and

(d) where the amendment of the previous Act, either expressly or by necessary intendment, applies the said provisions to the subsequent Act."

12. Since the petitioners desire the Court to read the provisions of the PULP Act into the W.J. Act via I.D. Act contending that PULP Act is an amendment to the I.D. Act the next question to be considered is whether PULP Act is an amendment

to the I.D. Act.

13. It is contended on behalf of the petitioners that Section 20(2) of the PULP Act amends the I.D. Act and the actual amendments to the I.D. Act are set out in Schedule I of the PULP Act. These amendments apply to all industries in the State of Maharashtra for which the State Government is the appropriate government. In the alternative, it is submitted that even if the whole of the PULP Act is not to be seen as an amendment to the I.D. Act the amendments mentioned in Schedule I do apply to the I.D. Act. The further convoluted submission is, since amendments in Schedule I apply to the workmen under the I.D. Act in the State of Maharashtra working in establishments for which the appropriate government is the State Government, a working journalist working in such establishment being entitled under Section 3(1) of the W.J. Act needs to be treated as a workman for "all purposes" of the I.D. Act.

14. Firstly, as can be seen from the purpose of the PULP Act quoted below the same was legislated essentially to regulate the trade union activities and the activities of the employer as a class.

"An Act to provide for the recognition of trade unions for facilitating collective bargaining for certain undertakings; to state their rights and obligations; to confer certain powers on unrecognised unions; to provide for declaring certain strikes and lock-outs as illegal strikes and lock-outs; to define and provide for the prevention of certain unfair labour practices; to constitute courts (as independent machinery) for carrying out the purposes of according recognition to trade unions and for enforcing the provisions relating to unfair practices; and to provide for matters connected with the purposes aforesaid".

The employees to whom it is made applicable are specified thereunder by defining the term "employee" at Section 3(5). Similarly the terms "employer" and "industry" are also defined at Section 3(6) and Section 3(7). The definition of "employee" in that Act reads as under :

"employee", in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in clause (13) of section 3 of the Bombay Act, and in any other case means a workman as defined in clause (s) of section 2 of the Central Act, and a sales promotion employee as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976.

The term "Bombay Act" in the definition means the Bombay Industrial Relations Act, 1946 and the term "Central Act" means the Industrial Disputes Act.

15. Considering the purpose of the PULP Act its scheme and the specific definitions thereunder of the parties to whom the same is made applicable it is not possible to accept the argument that the entire Act is an amendment to the I.D. Act. It is an independent legislation with a specific object and purpose, creating rights and liabilities for specified persons with provision for the

machinery for enforcement of rights and obligations under the Act.

16. As regards Schedule I to PULP Act the amendments to the I.D. Act stated therein must be held to be to ensure that the status granted to the recognised unions in PULP Act is not defeated. Secondly, as conceded by the petitioners W.J. Act in addition to the rights and responsibilities under the I.D. Act, grants some additional and enhanced rights to the working journalists in respect of leave, gratuity, wage boards for fixing of wages and service conditions, etc. Thirdly, as has been rightly pointed out by Mr. Talsania, if the State legislature intended to extend PULP Act to the working journalists it would have simply amended the definition of the term "employee" therein to include the working journalists in the definition. Such exercise has been done in respect of Sales Promotion Employees defined under the Sales Promotion Employees (Conditions of Service) Act, 1976. Therefore, in my opinion, the second argument of Mr. Sanghavi cannot be accepted.

17. The third argument of Mr. Sanghavi is that the petitioners who are working as Senior Sub-editor and Sub-editor respectively, even de-hors the provision of the W.J. Act would be workmen within the meaning of Section 2(s) of the I.D. Act considering the nature of the actual work being done by them. According to him, the exact nature of the work being done by the petitioners being a mixed question of fact and law, oral and documentary evidence thereon will have to be led and for that purpose the interests of justice demand that the matter be remanded to the Industrial Court for determining the exact nature of work done by the petitioners. In support of the submission for remand he relies upon the decisions of this Court in Hindustan Lever Limited v.. Hindustan Lever Employees Union and Ors. reported in (2007) 1 CLR 737.

18. In any case, he further submits that the work of Subeditor, Senior Sub-editor involves a high degree of technical knowledge and technical work. A Sub-editor/Senior Sub-editor is required to have technical knowledge about the English language, it's grammar, it's idioms and it's usage as in currency from time to time. To be able to effectively sub-edit, the sub-editor is required to have technical knowledge of various subjects like politics, law, science, sports etc. In addition, with the introduction of computers and modern technology, the work of a sub-editor requires a detailed technical knowledge of computers on which the editing is done. He submits that prior to the introduction of computers the work of sub-editing was done manually. Writing the edit, typing and making the page in hot metal and a large number of technical tasks thereunder was done by employees specifically employed for this purpose. This changed completely with introduction of computers. In the year 1990, the sub-editors were trained to use the computers. They were trained to draw file copy, edit, do the page layout, to surf and mail using internet, scan photograph and put up on the page, etc. The pagination, correction or moving story is done on the computer. This led to closing down of the Proof Reading Department and the subeditors have to do the proof reading on the computer. Thus, introduction of computers, various features

of the computers and dependency on the internet has made the sub-editor's job highly technically skilled. Consequently, a sub-editor would be a workman within the definition of Section 2(s) of the I.D. Act.

19. The respondent does not dispute that the above tasks are done by the working journalists and the above described skills are required to be displayed by them. In the circumstances the question for remand of the matter to the Industrial Court does not arise. Both the sides have by way of examples, relied upon decisions of the Apex Court and different High Courts on the claims made by persons from various types of professions, vocations and occupations in which varying types of technical skills are required for discharge of the respective duties, to be workman under the I.D. Act.

20. The first decision relied upon by Mr. Sanghavi is of a Single Judge of this Court in *Marshal Braganza v. S.R. Samant*, Presiding Officer, First Labour Court and Anr. reported in (1975) LLJ 189. The petitioner concerned therein was a film cameraman employed in motion picture industry. He claimed to be a workman under the I.D. Act on the basis that his work involves technical skills as a cameraman. The claim was disputed by his employer contending that the petitioner was in fact an artist whose job was mainly creative and imaginative. Though he needs to work on a machine i.e. camera, the major part of his work is that of an artist and hence creative and imaginative. It was also contended that the photography of two artists are unlikely to be the same or identical as in the case of clerical or mechanical work. The work of an artist requires some amount of visualisation. This gives originality to his work. The learned Single Judge rejected the objections of the employer stating following reasons:

".....It may be that in the narrow sense photography is an art but it is a highly developed science. As against ordinary photography which one comes across in every walk of life based on correct exposure, we have astronomical underwater and aerial photography which requires high qualifications for the job. The instant case concerns the nature of the work of a cameraman in motion pictures industry. It is the cameraman who has to produce the necessary effect on the screen according to the script. He interprets the ideas of the Director. The Director does not have exclusive control or supervision over the cameraman. In operating the camera, the cameraman may take the assistance of others in operating the camera which does not remain stationary but moves in relation to the movements of the characters. Camera follows a character, dollying ahead or following in profile because the character is walking. The ideal aimed at by the cameraman is that the audience should never be aware of the camera moving. Camera may dolly up to the face of the character for emphasis. The cameraman is required to show reality. He makes use of the camera to give appearance of visible reality. He makes use of the camera to give appearance of visible reality. The passages cited from various books relating to cinematography and television also show that the work of a cameraman depends on special mental training and technical knowledge. He achieves the aim of reality by his imaginative faculty as

well. Functions like camera angles, lighting the scene, composition, long shot, medium long shot, medium shot, medium closeup, close-up would be technical and not merely the work of an artist as urged on behalf of the 2nd respondent. In my judgment, the execution of the work of a cameraman involves special technical knowledge. The nature of the work of the cameraman indicates that for the successful creation of reality in a motion picture he depends upon the display of his imagination and the exercise of artistic faculty and the application of technical knowledge as distinguished from manual dexterity. "

21. The second decision relied upon by Mr. Sanghavi is of the decision of Calcutta High Court in *Dr. P.N. Gulati v. Labour Court, Gorakhpur & Ors.* reported in (1978) II LLJ page 46. By this decision a medical doctor was held to be a workman with an observation that though he is not employed for doing manual or clerical work he certainly is employed for doing work of technical work. As against this, Mr. Talsania relies upon decision of the Apex Court in *E.S.I.C. Medical Officer's Association v. E.S.I.C. & Anr.* reported in Air (2014) SC page 1259 by which similar claim of a medical doctor is rejected with following observations:

"11. We are of the view that a medical professional treating patients and diagnosing diseases cannot be held to be a "workmen" within the meaning of Section 2(s) of the ID Act. Doctors' profession is a noble profession and is mainly dedicated to serve the society, which demands professionalism and accountability. Distinction between occupation and profession is of paramount importance. An occupation is a principal activity related to job, work or calling that earns regular wages for a person and a profession, on the other hand, requires extensive training, study and mastery of the subject, whether it is teaching students, providing legal advice or treating patients or diagnosing diseases. Persons performing such functions cannot be seen as a workman within the meaning of Section 2(s) of the ID Act..."

In the same decision the Apex Court has reiterated observations in its earlier decision as regards distinction between Occupation and Profession. It has quoted following paras from its decision in *Muir Mills Unit of NTC (UP) Ltd. v. Swayamprakash Sariwastava* reported in AIR (2007) SC 519 :

"38. Furthermore, if we draw a distinction between occupation and profession we can see that an occupation is a principal activity (job, work or calling) that earns money (regular wage or salary) for a person and a profession is an occupation that requires extensive training and the study and mastery of specialised knowledge and usually has a professional association, ethical code and process of certification or licensing. Classically, there were only three professions: ministry, medicine and law. These three professions each hold to a specific code of ethics and members are almost universally required to swear to some form of oath to uphold those ethics, therefore "professing" to a higher standard of accountability. Each of these professions also provides and requires extensive training in the meaning, value and importance of its particular oath in the practise of that

profession.

39. A member of a profession is termed a professional. However, professional is also used for the acceptance of payment for an activity. Also a profession can also refer to any activity from which one earns one's living, so in that sense sport is a profession.

40. Therefore, it is clear that Respondent 1 herein is a professional and never can a professional be termed as a workman under any law."

22. Mr. Talsania next refers to decision of the Apex Court in *Bharat Bhawan Trust v. Bharat Bhawan Artists' Association & Anr.* reported in (2001) 7 SCC page 630 wherein the Apex Court considered whether an artist engaged in an institute for promotion of art and culture could be termed as a workman. It answered the question in the negative with following observations:

"10. An artist engaged in the production of a drama or in theatre management or to participate in a play can by no stretch of imagination be termed as "workman" because he does not indulge in any manual, unskilled or technical, operational or clerical work, though he may be skilled, it is not such a work which can be read ejusdem generis along with other kinds of work mentioned in the definition. A Constitution Bench of this Court in *H.R. Adyanthaya v. Sandoz (India) Ltd.* case after review of the entire case-law, held as follows :

"As regards the word "skilled", we are of view that the connotation of the said word in the context in which it is used, will not include the work of a sales promotion employee such as the medical representative in the present case. That word has to be construed ejusdem generis and thus construed, would mean skilled work whether manual or non-manual, which is of a genre of the other types of work mentioned in the definition.

[emphasis supplied]"

23. In another decision of the Apex Court cited by Mr. Talsania in *Sonepat Cooperative Mills Ltd. v. Ajit Singh* reported in (2005) 3 SCC page 232, a question arose whether a Legal Assistant with a degree of law and a practicing licence can fall within the definition of workman under Section 2(s) of the I.D. Act. The Apex Court held that for a person to come within the purview of the definition he must be (i) employed in any industry and (ii) perform any manual, unskilled, skilled, technical, operational, clerical or supervisory work. The work done must be stereotype work, without power of control or dignity or initiative or creativeness.

24. The petitioners herein working as sub-editors cannot even claim to be doing a stereotype work. They have to have certain inherent qualities for performing their job. They need to have a flair for the language along with the mastery over language. They need to be in tune with the current topics, have sufficient knowledge of subjects like politics, law, science, sports, arts, etc. In fact, as submitted by Mr. Talsania, Majithia Wage Board constituted under Section 9 and

13(c) of the W.J. Act describes the sub-editor as "a person who receives, selects, shortens, summarizes, elaborates, translates, edits and headlines news items of all descriptions and may do some or all of these functions." This description would make their work undoubtedly creative. For the sake of performing their creative work if they have to acquire technical skills to operate the computers, etc. such skill would be only ancillary to their main work. That skill cannot be relevant for deciding whether they are workmen within the definition under Section 2(s) of the I.D. Act. Therefore the third argument of Mr. Sanghavi also needs to be rejected.

25. For the reasons stated above it is held that a working journalist within the meaning of Section 2(f) of the W.J. Act is not an employee within the meaning of Section 3(5) of the PULP Act and the petitions are dismissed.