(1973) 02 AHC CK 0039

In the Allahabad High Court

Case No : Sp. A. No. 691 of 1970

M/s. Star paper Mills Ltd. Saharanpur APPELLANT

Vs

The State of U.P. and another RESPONDENT

Date of Decision : 02-02-1973

Acts Referred:

Motor Transport Workers Act, 1961 — Section 2(g), 2(h)(ii)
Uttar Pradesh Shops and Commercial Establishments Act, 1947 — Section 2(4)

Citation : (1973) 43 AWR 363

Hon'ble Judges : Yashodanandan, J;Satish Chandra, J

Bench : Division Bench

Advocate : S.N. Kaoker, Sri Dhar and Ashok Mohilay, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This appeal is directed against the judgment of a learned single Judge dismissing a writ petition. In its turn the writ petition prayed that the State of Uttar Pradesh and the Additional Regional Conciliation Officer, Saharanpur be restrained from enforcing the provisions of Motor Transport Workers Act against the Appellant.

2. Messrs Star Paper Mills Ltd,, Saharanpur the Appellant, is a limited company, carrying on the business of manufacture and sale of paper. Its registered office is at Calcutta. Its factory is situate at Saharanpur in Uttar Pradesh. At Saharanpur the company established a Transport Department to collect raw materials like Bais Grass and Pine wood to be utilised for the manufacture of paper. This department owns a fleet of 38 transport vehicles which are worked by numerous drivers, cleaners, operators etc. employed by the Appellant company

3. In October, 1963 the Appellant company applied u/s 38(2)(iii) of the Motor Transport Workers Act, 1961 for exemption from its provisions. On 30th September, 1964 the Additional Regional Conciliation Officer rejected, the prayer and directed the Appellant company to get itself registered under the Motor

Transport Workers Act, 1961. Aggrieved the Appellant company came to this Court Under Article 226 of the Constitution. A learned Single Judge was '' not impressed by any of the submissions raised in support of the petition and dismissed it. Hence the present appeal.

4. For the Appellant it was urged that the Saharanpur Office of the Appellant company is an independent department and is not a motor transport undertaking as defined by the Motor Transport Workers Act. Section 1(4) of the Workers, Act applies it to every motor transport undertaking employing five or more motor transport workers. Clause (g) of Section 2 defines a motor transport undertaking to mean a motor transport undertaking engaged in carrying passengers or goods or both by road for hire or reward and includes a private carrier.

5. Clause (h) defines motor transport workers to mean a person who is employed in a motor transport undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transport vehicle and includes a driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot clerk, time-keeper, watchman or attendant, but except in Section 8 does not include

(i) any such person who is employed in a factory as defined in the Factories Act, 1948;

(ii) any such person to whom the provisions of any law for the time being in force regulating the conditions of service of persons employed in shops or commercial establishments apply.

It will be seen that the Act applies for motor transport undertaking. It applies to such an undertaking in respect of motor transport workers as defined. The definition confines itself to those persons who are employed on a transport vehicle in a professional capacity. Therefore, even if the undertaking may be a motor transport undertaking as defined yet the Act will not apply to such of its workmen as are not covered by the definition of motor transport workers.

6. We have thus to see whether the provisions of the Motor Transport Workers Act, 1961 were applicable at all to the Saharanpur Office of the Appellant company. At that place the company owns a large fleet of transport vehicles in which admittedly it employees more than five workers which are covered by the definition of motor transport workers. Ex-facie the Saharanpur office will be a motor transport undertaking employing motor transport workers.

7. For the Appellant a two fold

submission was raised in order to exclude the applicability of this Act. In the first place, it was urged that Saharanpur office of the Appellant company is not a motor transport undertaking as defined by Clause (g) because at Saharanpur it was not engaged in carrying passengers or goods for hire or reward. That may be so. But the definition includes a private carrier. The term "private carrier" has not been defined by the Workers Act. On the other hand, Clause (n) of Section 2 provides that all other words and expressions used but not defined in this Act and defined in the Motor Vehicles Act, 1939, shall have tin meanings respectively assigned to them in that Act. The term "private carrier" has been defined in Section 2(22) of the Motor Vehicles Act 1939 as an owner of a transport vehicle other than a public carrier who uses that vehicle solely for the carriage of goods which are his property or the carriage of which is necessary for the purpose of his business, not being a business of providing transport. On its own case, the Appellant company is within this definition, because it uses the transport vehicle for carriage of goods needed by its own business. In Municipal Council Raipur v. Madhya Pradesh 1970 (2) LLJ 40 such private carriers were held to be within the definition of motor transport undertaking under the Motor Transport Workers Act. This part of the submission, therefore, fails.

8. The second limb of the submission was that the workers used in the Appellants'' transport vehicles are covered by Sub-clause (ii) of Clause (h) of Section 2 of the Motor Transport Workers Act to whom the U.P. Shops and Commercial Establishments Act, 1947 apply. Section 2(4) defines commercial establishment to mean any premises not being the premises of a factory or a shop, wherein any trade business, manufacture, or any work in connection with, or incidental or ancillary thereto, is carried on for profit and includes a premises wherein journalistic or printing work or banking, insurance, stocks and shares, brokerage or produce exchange is carried on, or which is used as theatre, cinema, or for any other public amusement or entertainment, or where the clerical and other establishment of a factory, to whom the provisions of the Factories Act, 1948 do not apply work. For the Appellant stress was placed on the last clause "or where the clerical and other establishment of a factory, to whom the provisions of the Factories Act, 1948 do, not apply, work"; Learned Counsel submitted that the Saharanpur office was a commercial establishment of the Appellant factory, but was such an establishment to whom the provisions of the Factories Act, 1948 do not apply. Therefore the clerical and other such parts of the establishment would be commercial establishment. We are unable to accept this submission because this clause of the definition of commercial establishment emphasises that before such premises can be "commercial establishment the clerical or other establishment of the factory must work on the premises. It they work elsewhere then even though an institution may maintain such premises as an establishment yet the definition will not extend to those workers who do not work at this premises. The Appellants case is that the raw material i.e. baib grass and pine wood are collected from the interior of the Kumaun forest and transported by the motor vehicles to different railway ''stations for onward dispatch to mills premises at Siharanpur. Their pay, allowances etc. are disbursed by the office at Saharanpur. Those workers are administratively controlled from the Saharanpur office. Their daily attendance is maintained there. It is also stated that transport workers working on motor vehicles stay at Ramnagar or Kashipur and get travelling allowances for outdoor duties. It is thus manifest that

the workers employed in the transport vehicles actually work in the field, that is, in the forest or on the road while collecting or transporting the raw materials. They do not actually work at the premises at Saharaipur. From this point of view these workers of the motor vehicles cannot be said to be within the last part of the definition in Section 2(4). The Saharanpur Transport establishment of the Appellant factory, therefore, is not a commercial establishment in respect of the workers of the transport vehicles. In this view it is unnecessary to discuss or decide the further question which was canvassed before the learned single Judge whether the Saharanpur establishment which is called the Forest Department of the Appellant factory was actually a separate establishment from its Saharanpur establishment in the sense that it was an independent establishment from the factory.

9. In our opinion, the Respondents were justified id requesting the Appellant company to get the employees of the transport section registered under the Motor Transport Workers Act, 1961. The writ petition was rightly dismissed. The appeal has no substance and is, accordingly dismissed with costs.

