
(1994) 08 MAD CK 0065

In the Madras High Court

Case No : Writ Petition No"s. 6964 of 1993, 96-101 and 182-187 of 1991

M.S.N. Sundarampillai and Co.

APPELLANT

Vs

N. Palaniswamy and Others

RESPONDENT

Date of Decision : 02-08-1994

Acts Referred:

Factories Act, 1948 — Section 1(3), 2, 38, 85
Payment of Gratuity Act, 1972 — Section 1, 1(3), 2

Citation : (1994) 2 LLJ 502

Hon'ble Judges : D.J. Jagannadha Raju, J

Bench : Single Bench

Judgement

D. Raju, J.—This batch of writ petitions involves identical questions of law and the learned counsel on either side also made submissions in common, and therefore, requires to be considered together.

2. To appreciate the issues raised, the relevant facts in one of the writ petitions should be referred to W. P. No. 6964 of 1993 has been filed praying for the issue of a writ of mandamus forbearing the second respondent from proceeding further in PGIA No. 10 of 1993, the application filed by the first respondent claiming benefits under the provisions of the Payment of Gratuity Act, 1972 and the rules made thereunder.

3. The writ petitioner-Company claims that it is carrying on business in the manufacture and sales of beedies, that the beedi and cigar workers are governed by the Beedi and Cigar (Conditions of Employment) Act, 1966 and that the conditions of employment of beedi workers are of various types and most of them are home workers. It is also claimed that the Payment of Gratuity Act, 1972, was not made applicable to beedi and cigar workers till date and that as the definition of "establishment" stands, the provisions of the Payment of Gratuity Act (for short "Gratuity Act") will have no application.

4. In support of the claim made by the petitioner, that the first respondent is not entitled to invoke the jurisdiction of the second respondent - Assistant

Commissioner of Labour, under the provisions of the Gratuity Act, it is stated in the affidavit as hereunder :

(a) The petitioner-Establishment cannot fall within any of the categories of establishments referred to in sub-clauses (a) and (b) of sub-section (3) of Section 1 of the Gratuity Act. It is also contended that no such notification as contemplated under sub-clause (c) of sub-section (3) of Section 1 of the Act has also been issued so far and consequently, on the terms of the very provisions contained in the Gratuity Act, the said Act will have no application to the beedi manufacturing establishment;

(b) The establishment in question cannot be said to satisfy the requirements of sub-clause (b) of sub-section (3) of Section 1 of the Gratuity Act, in that, according to the petitioner, the establishment in question will not fall within the meaning of "establishment" or "shop" within the meaning of any law for the time being in force with reference to shops and establishments in a State, and

(c) The provisions of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 alone applies to the establishment in question and having regard to Section 38(2) of the said Act, nothing contained in any law relating to regulation of the conditions of employment of workers in shops or commercial establishments will apply to the establishments to which the said Act applies;

5. Learned counsel for the petitioner, L. Rajasekhar, has reiterated the above grounds urged in the affidavit filed in support of the writ petition and relied on some of the provisions of the Gratuity Act as also certain judgments rendered on the subject by different courts, to which reference will be made later.

6. Mr. R. Ganesan, learned counsel appearing for the workers concerned, contended that the subject matter is no longer res integra and that the matter is by now well settled by more than one decision of Bombay High Court and Andhra Pradesh High Court and that those decisions, which, according to the learned counsel for the workers, lay down the correct position of law require to be applied to the cases on hand.

7. Section 1(3) of the Gratuity Act reads as hereunder :

"It shall apply to -

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf."

Clause (g) of section 2 of the Gratuity Act defines "factory" to mean, a factory as defined under clause (m) of Section 2 of the Factories Act, 1948. There is no specific or special definition of the word "shop" or "establishment" in the Gratuity Act itself. It could be seen from clause (b) of sub-section (3) of Section 1 of the Gratuity Act, a shop or establishment visualised for the purpose of the Gratuity Act is referable to the meaning ascribed in any law for the time being in force in relation to shops and establishments, in a State.

7. The Tamil Nadu Shops and Establishments Act, 1947 provides for the regulation of workers in shops, commercial establishments, restaurants, theatres and other establishments and for other allied purposes. Sub-section (6) of Section 2 of the Tamil Nadu Shops and Establishments Act defines "establishment" to mean a shop, commercial establishment, restaurant, eating house, residential hotel, theatre or any place of public amusement or entertainment and includes such establishment as the State Government may by notification declare to be an establishment for the purpose of this Act. Sub-section (16) of Section (2) defines "shop" as follows :

"shop" means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns and warehouses, whether in the same premises or otherwise, used in connection with such business but does not include a restaurant, eating-house or commercial establishment."

This definition is comprehensive enough by itself to cover the petitioner establishments within the meaning of the word "shop".

8. The provisions of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 are next to be adverted to. The provisions of the said Act provide for the welfare of the workers in beedi and cigar establishment and to regulate the conditions of their work and for matters connected therewith. Sub-section (h) of Section 2 defines "establishment" as hereunder :

"establishment" means any place or premises including the precincts thereof, in which or in any part of which any manufacturing process connected with making of beedi or cigar or both is being, or is ordinarily, carried on and includes an industrial premises."

Even the petitioners cannot and are not factually disputing the position that their establishment are taken within the fold of the said definition of "establishment".

There is no separate definition of the word "shop" under this Act. Section 38 on which a strong reliance has been placed for the petitioner reads as hereunder.

"Certain provisions not to apply to industrial premises (1) Chapter IV and Section 85 of the Factories Act, 1948 (62 of 1948) shall apply to an industrial premises and the rest of the provisions in that Act shall not apply to any industrial premises."

(2) Nothing contained in any law relating to regulation of the conditions of work of workers in shops or commercial establishments shall apply to any establishment to which this Act applies."

9. Learned counsel appearing on either side brought to my notice the decision of the some of the Courts to which a reference may be made hereinafter. The decision in State of Punjab Vs. Labour Court Jullunder and Others, is that of the Supreme Court, wherein the scope and applicability of the provisions of the Gratuity Act with particular reference to Section 1(3) came up for consideration. While analysing the scope and purport of the Gratuity Act, it was held that the Payment of Gratuity Act enacts a complete Code containing the essential conditions for payment of gratuity and that it creates a right to payment of gratuity and also indicates when the right will accrue and lays down the principles for quantification of the gratuity apart from providing for the recovery of amount making special provisions for payment of compound interest for delayed payments. It was also held that the Parliament intended that the proceedings for payment of gratuity due under the Gratuity Act must be taken under that Act and not under any other Act. While dealing with the scope of clause (b) of sub-section (3) of Section 1 of the Gratuity Act, the Supreme Court held as hereunder at pp. 355-356.

"It is said for the appellant that the Payment of Wages Act is not an enactment contemplated by Section 1(3)(b) of the Payment of Gratuity Act. The Payment of Wages Act, it is pointed out, is a Central enactment and Section 1(3)(b), it is said, refers to a law enacted by the State Legislature. We are unable to accept the contention. Section 1(3)(b) speaks of "any law for the time being in force in relation to shops and establishments in a State. " There can be no dispute that the Payment of Wages Act is in force in the State of Punjab. Then, it is submitted, the payment of Wages Act is not a law in relation to "shops and establishment". As to that, the Payment of Wages Act is a statute which, while it may not relate to shops, relates to a class of establishments, that is to say, industrial establishments. But, it is contended, the law referred to u/s 1(3)(b) must be a law which relates to both shops and establishments, such as the Punjab Shops and Commercial Establishments Act, 1958. It is difficult to accept that contention because there is no warrant for so limiting the meaning of the expression "law" in Section 1(3)(b). The expression is comprehensive in its scope, and can mean a law in relation to shops as well as separately, a law in relation to establishments, or a law in relation to shops and commercial establishments and a law in relation to non-commercial establishments. Had Section 1(3)(b) intended to refer to a single enactment, surely the appellant would have been able to point to such a statute, that is to say, a statute relating to shops and establishments, both commercial and non-commercial. The Punjab Shops and Commercial Establishments Act does not relate to all kinds of establishments. Besides shops, it relates to commercial establishments alone. Had the intention of Parliament been, when enacting Section 1(3)(b); to refer to a law relating to commercial establishments, it would not have left the

expression establishments unqualified. We have carefully examined the various provisions of the Payment of Gratuity Act, and we are unable to discern any reason for giving the limited meaning to Section 1(3)(b) urged before us on behalf of the appellant. Section 1(3)(b) applied to every establishment within the meaning of any law for the time being in force in relation to establishments in a State. Such an establishment would indicate an industrial establishment within the meaning of Section 2(ii)(g) of the Payment of Wages Act. Accordingly, we are of opinion that the Payment of Gratuity Act applies to an establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on. The Hydel Upper Bari Doab Construction Project is such an establishment and Payment of Gratuity Act applies to it.

The decision in *B.N. Sarda (Pvt.) Ltd. Vs. Kisan K. Borade*, is that of Division Bench of Bombay High Court, wherein the scope of Section 1(3)(b) of the Gratuity Act came up for consideration. The consideration therein was directly with reference to a beedi manufacturing establishment as in this case, with particular reference to the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (hereinafter referred to as "the Beedi and Cigar Workers Act".) After adverting to the ratio of the decision in the *State of Punjab v. Labour Court, Jullundur* (noticed supra), the Division Bench of Bombay High Court held that the Gratuity Act applies even in cases of an establishment or shop covered by the Beedi and Cigar Workers Act. While repelling the plea raised before the Division Bench of Bombay High Court that "the law for the time being in the force" mentioned in clause (b) of sub-section (3) of Section 1 of the Gratuity Act would have relevance only to a local law enacted by the State Legislature, it was held that when Section 1(3)(b) of the Gratuity Act refers to "any law for the time being in force", there was no justification to qualify those words by introducing a further qualification that the law should be either Central Law or State Law and that it has relevance really to the law in force in the State, whether it is a State Law or a Central Law. In substance the Division Bench held that it is immaterial as to the Legislature which enacted the law and the applicability or force in the State is the ultimate requirement or the criteria to be seen.

10. The decision in *K. Gangadhar and others v. The Appellate Authority under Payment of Gratuity Act, 1993* I CLR 480 is that of learned single Judge of Andhra Pradesh High Court, wherein an issue of the nature which is under consideration before me has come up with reference to the very category of the workers. The learned single Judge has chosen to apply the earlier decisions referred to supra and rejected the plea of the employers. In addition to the other considerations made by the Apex Court as also the division Bench of Bombay High Court the consideration, of the issue based on the provisions of Section 38(2) of the Beedi and Cigar Workers Act has also been raised. The said issue raised does not appear to have been under the serious consideration of the

learned Judge. In other respects, the learned Judge held as hereunder : (PP 482-483)

"As stated above, the making of beedis being manufacturing process and the employee being a worker, whether working in industrial premises or in establishment, the latter taking in even the home worker, in any event of the matter, the management is an establishment and such an establishment need not be Central or State and need not be one covered by A. P. Shops and Establishments Act, as the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 is an independent Act by itself and for conferring the benefits under the said Act, there is no need to have resort even to the Factories Act or to the A. P. Shops and Establishments Act. The said Act of 1966 dealing with the workmen engaged in the manufacturing process of Beedis and Cigars is for welfare of labour. The true nature and character of the legislation shows that it is for enforcing better conditions of labour amongst those who are engaged in the manufacturing of beedis and cigars. It is intended to achieve welfare benefits and amenities for the labour.

The Supreme Court while construing the scope of Section 1(3)(b) of the Payment of Gratuity Act, 1972, has held in the State of Punjab v. Labour Court, Jullundur (Supra) that it is difficult to accept the contention that law referred to u/s 1(3)(b) of Payment of Gratuity Act, 1972 must be a law which relates to both shops and establishments such as the Punjab Shops and Commercial Establishments Act, 1958 and that there is not warrant for so limiting the meaning of the expression "law" u/s 1(3)(b). Held, the Supreme Court further, that the expression is comprehensive in its scope and can mean a law in relation in shops as well as, separately, a law in relation to establishment, or a law in relation to shops and commercial establishments and a law in relation to non-commercial establishment and further held that Section 1(3)(b) of Payment of Gratuity Act, 1972 applies to every shop within the meaning of any law for the time being in force in relation to shops in a State. Relying upon the said judgment, a Division Bench of Bombay High Court has held in B. N. Sardar Pvt. Ltd. v. Kisan K. Borade (Supra) that the word "establishment" employed u/s 1(3)(b) of the Payment of Gratuity Act, 1972 is comprehensive in nature and rules emphatically that the provisions of Beedi and Cigar Workers (Conditions of Employment) Act, 1966 will show that it is positively a legislation in relation to a particular kind of establishment where the workers are engaged in the manufacturing of beedis and cigars and it is clearly a law in relation to an establishment as contemplated by the provisions of Section 1(3)(b) of Payment of Gratuity Act, 1972. It held that for the applicability of Payment of Gratuity Act, 1972, it may be a shop or establishment within the meaning of any law, whether it is a State Law or Central Law and that the provisions of the Payment of Gratuity Act, 1972 will be applicable in the case of the employees in that establishment if the employees fall within the definition u/s 2(e) of the said Act. Similar, contentions were also raised before the said Court with regard to non-applicability of Payment of Gratuity Act, 1972. Repelling the said contention, the said Court held that the

Beedi and Cigar Workers (Conditions of Employment) Act, 1966, is a law enacted by the Parliament and deals with the establishment where the manufacturing of beedis is carried on and the said establishment comes within the ambit of Section 1(3)(b) of Payment of Gratuity Act and consequently, the said beneficial legislation, i.e. Payment of Gratuity Act, 1972 is applicable to beedi and cigar workers.

Having regard the interpretation placed on the scope of Section 1(3)(b) of Payment of Gratuity Act, 1972 vis-a-vis the provisions of Beedi and Cigar Workers (Conditions of Employment) Act, 1966, I hold that the management, in the instant case, is an establishment within the meaning of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and the said Act is a law relating to establishments operative in the State of Andhra Pradesh and as such, come within the purview of Section 1(3)(b) of the Payment of Gratuity Act, 1972 and consequently, the workers are entitled for the Payment of Gratuity under the provisions of Payment of Gratuity Act, 1972 and the management is liable to pay the same as specified under the said statute and the rules made thereunder."

11. The decision in *The Management of S. I.E. T. Women's College v. Mohamed Ibrahim and others* 1992 I LLJ 91 is that of a Division Bench of this Court considering the scope of Section 1(3)(b) of the Gratuity Act in the context of educational institutions, wherein it has been held that an educational institution is an establishment defined u/s 2(c) of the Tamil Nadu Payment of Subsistence Allowance Act, Tamil Nadu Act 43 of 1981, as also an industry within the meaning of Industrial Disputes Act and, therefore, will attract the provisions of the Gratuity Act. The learned Judges also adverted to the decision of the Supreme Court (*State of Punjab v. Labour Court, Jullundur*) earlier referred to.

12. After a careful consideration of the submissions made by the learned counsel on either side, I am of the view that the issue raised in this case is squarely found decided in favour of the stand taken for the workers, in all the above decisions. The construction placed by the Supreme Court as also by the High Courts, to which a reference has been made, on the scope of Section 1(3) (b) of the Gratuity Act, squarely governs the present case also. The view taken by the Division Bench of the Bombay High Court (*B. N. Sarada Private Ltd's case - (Supra)*) also by a learned single Judge of Andhra Pradesh High Court (*K. Gangadhar's case - (Supra)*) in my view is in conformity with the ratio of the Supreme Court's decision referred to supra and I am respectfully in agreement with the reasoning of the learned Judges of Bombay High Court and the Andhra Pradesh High Court. The decisions apply to the present cases also on all fours.

13. Learned counsel for the petitioner, realising the hurdles in his way, has placed heavy reliance upon Section 38(2) of the Beedi and Cigar Workers Act to contend that to an establishment to which the said Act applied, nothing contained in any other law will be applicable and consequently, by virtue of the said provision, the provisions of the Gratuity Act will have no application to the petitioner - concern, which is involved in the manufacture and sale of beedies. Attractive though the

argument may appear to be it cannot withstand close scrutiny. Section 38 of the said Act has two limbs. First of it provides that Chapter IV and Section 85 of the Factories Act, 1948 alone shall apply to an industrial premises as defined under the Beedi and Cigar Workers Act and the rest of the provisions of that Act shall not apply to any industrial premises. The second limb of Section 38 stipulates that nothing contained in any law relating to the conditions of workers in shops or commercial establishments shall apply to any establishment to which this Act applies. In my view, the Gratuity Act cannot be said to be a law relating to the conditions of work of workers in shops or commercial establishments. The law which is visualised therein, in my view, only take in its fold a law like the Tamil Nadu Shops and Establishments Act, which confers a special right under specified circumstances with special procedure for enforcing the benefits conferred thereunder. Consequently, in my view, the claim made for the petitioner on the basis of Section 38(2) of the Beedi and Cigar Workers Act has no merit of acceptance and shall stand rejected. For all the reasons stated above, it has to be held that the provisions of the Gratuity Act would stand attracted to the establishments governed by the provisions of Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and the workers are entitled to invoke the jurisdiction of the Controlling Authority under the Gratuity Act to grant them the relief to which they may be entitled to under the provisions of the Gratuity Act.

14. These writ petitions, therefore, shall stand dismissed. The Controlling Authority under the Gratuity Act shall be at liberty to consider the claims of the workers otherwise on merits and in accordance with law. There will be no order as to costs.