

(1997) 09 P&H CK 0124

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. No. 29 of 1998 in C.W.P. No. 3408 of 1986

Municipal Committee

APPELLANT

Vs

A. Nathi Ram and Others

RESPONDENT

Date of Decision : 11-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 1(3)

Citation : (1998) 3 LLJ 1230 : (1998) 118 PLR 197

Hon'ble Judges : M.L. Singhal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Rajesh Chaudhary, for the Appellant; Sudarshan Goyal and S.C. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Whether Municipal Committee/Council falls within the ambit of Section 1(3)(b) of the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Act") is the only question which arises for adjudication in this Letters Patent Appeal.

2. Although the aforementioned question has already been answered by a Division Bench in Kundan Lal Narang v. State of Haryana and Ors., (C.W.P. No. 427 of 1987 decided on August 25, 1987) in the affirmative, learned counsel for the appellant has challenged the correctness of that decision on the ground that the Bench which decided Kundan Lal Narang's case did not take into consideration the provisions of the Punjab Shops and Commercial Establishments Act, 1958 (hereinafter called as "the Act of 1958"). We have reconsidered the issue in the light of the submissions at the Bar and are convinced that the decision of Kundan Lal Narang's case does not require reconsideration.

3. Succinctly stated, the facts of the case are that the respondents who were employed in the services of the Municipal Committee, Thanesar instituted C.W.P. No. 3408 of 1986 for quashing; the circular dated January 20, 1986 issued by

the Commissioner and Secretary to the Government, Haryana, Local Government Department whereby he directed that only those municipal employees who had retired on or after September 16, 1972, should be paid gratuity in accordance with the provisions of the Act. They prayed that the respondents be directed to pay them gratuity under the Act. The Municipal Committee, Thanesar (appellant herein) contested the claim of the respondents primarily on the ground that the provisions of the Act are not applicable to it inasmuch as the municipalities are not covered by Section 1(3)(b) of the Act. It also pleaded that in view of the notification issued by the Government of India on January 8, 1982 u/s 1(3)(c), the provisions of the Act will apply only to those employees who retired on or after January 8, 1982 and as the petitioners had retired prior to that date they are not entitled to be paid gratuity under the Act.

4. The learned Single Judge accepted the writ petition in view of the law laid down in Kundan Lal Narang's case (supra) and directed the appellant to pay gratuity to the writ petitioners except to those who had retired before the enforcement of the Act.

5. Learned counsel for the appellant strongly pleaded for re-consideration of the view taken by the Division Bench in Kundan Lal Narang's case and urged that the Division Bench has erred in holding that the municipalities fall within the ambit of the term "establishment" used in Section 1(3)(b) of the Act. Shri Chaudhary submitted that the only law which is applicable to the shops and commercial establishments in the State of Haryana is the Act of 1958 and as the municipalities are not covered by the definition of "shop" or "commercial establishment" or "establishment" under the Act of 1958, the provisions contained in Section 1(3)(b) of the Act cannot be invoked by the employees of the municipalities. Learned counsel for the respondents supported the judgment of the Division Bench as well as the impugned judgment. He argued that the word "establishment" used in Section 1(3)(b) of the Act should not be read as confined to "Commercial establishment" but should be given a liberal interpretation keeping in view the purpose sought to be achieved by the Act.

6. In order to appreciate the rival contentions and decide whether the judgment of Kundan Lal Narang's case requires re-consideration, we may briefly refer to the background in which the Act was enacted.

7. The need for this enactment was felt because there was no central legislation to regulate the payment of gratuity to industrial workers except the working journalists who were governed by the provisions of the Working Journalists (Conditions of Service and Misc. Provisions) Act, 1955. The Governments of the States of Kerala and West Bengal had enacted legislations for payment of gratuity to various categories of workers but other States had not done so. The Central Government felt that instead of having different legislations for different States, there should be a common legislation which would ensure uniform pattern of payment of gratuity to the employees throughout the country. That is how the Act of 1972 came to be enacted. A look at the Preamble of the Act

shows that it has been enacted to provide for a scheme for payment of gratuity to employees engaged in factories, mines, oil fields, plantations, ports, railway companies, shops or other establishments and matters connected therewith or incidental thereto. Section 1(3)(b) and 1(3)(c) of the Act which are relevant for the purposes of deciding this appeal read as under :

"1. Short title, extent, application and commencement :

(1)&(2)xx xx xx

(3) It shall apply to-

(a) xx xx xx xx

(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.

(3A)&(4) xx xx xx xx

We also reproduce Section 2(1)(iv), 2(1)(viii) and 2(1)(xxv) of the Act of 1958, which contain definitions of terms "commercial establishment", "establishment" and "shop" respectively. The same read as under :

"2. Definitions : (1) In this Act, unless the context otherwise requires :

(i) to (iii) xx xx xx xx

(iv) "commercial establishment" means any premises wherein any business, trade or profession is carried on for profit, and includes journalistic or printing establishments and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on or which is used as hotel, restaurant, boarding or eating house, theatre, cinema or other place of public entertainment or any other place which the Government may declare, by notification in the official Gazette, to be a commercial establishment for the purpose of this Act.

(v) to (vii) xx xx xx xx

(viii) "establishment" means a shop or a commercial establishment.

(xxv) "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, sale depots or warehouses whether the same premises or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons

employed in the shop are allowed in the benefits provided for workers under the Factories Act, 1948.

(xxvi) to (xxxi) xx xx xx (2) xx xx xx xx xx"

8. Shri Chaudhary's contention is that the expression "any law for the time being in force in relation to shops and establishments in a State" occurring in Section 1(3)(b) of the Act should be read in the light of the provisions of the Act of 1958 because there is no other law which deals with the shops and establishments in the State of Haryana. Learned counsel submitted that a municipality can neither be treated as a commercial establishment nor a shop nor an establishments as defined in the Act of 1958 because no business or trade or profession is carried out for profit in the premises of the municipality. Learned counsel submitted that the municipality cannot also be treated as a hotel, restaurant, boarding or eating house, theatre, cinema or other place of public entertainment. He further submitted that the municipality is not engaged in any trade or business nor any service is rendered to the customers nor can it be treated as a store-room, godown, sale "depot or warehouse. He then argued that while deciding Kundan Lal Narang's case the Division Bench seriously erred in relying on the provisions of the Payment of Wages Act, 1936 because the said Act does not relate to shops and establishments. Learned counsel for the respondents argued that the word "comrnercial" cannot be added between the words "and" and "establishments" used in Section 1(3)(b) of the Act and there is no reason to restrict or curtail the scope of the clause by which a beneficial legislation has been made applicable to all shops and establishments.

9. There cannot be two views that the Act of 1972 is a piece of social welfare legislation enacted with a view to lay down a uniform pattern of payment of gratuity to different categories of employees who are employed in shops and establishments. While interpreting the provisions of the Act, the Court has to bear in mind that a welfare legislation must receive liberal construction keeping in view the purpose of the legislation. Therefore, if more than one interpretation can be given to the expression "any law for the time being in force in relation to shops and establishments in a State", then the one which advances the object of the legislation will be preferred as against an interpretation which would 1 wholly or partially defeat the legislative intendment. The Court will also refrain from interpreting a beneficent Statute like the Act of 1972 in such a manner which may curtail its wide amplitude and result in denial of benefit of gratuity to a class of employees, unless it becomes a compelling necessity.

10. A careful analysis of Section 1(3)(b) of the Act shows that it applies to 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. It is note worthy that the Legislature has not used the word "commercial" between the words "and" and "establishments" although it must be presumed to be aware of the aws enacted by the State Legislatures in relation to the shops and commercial establishments. In order to accept Shri Chaudhary's argument, we will have to add the word

"commercial" between the words "and" and "establishments" in Section 1(3)(b). Simultaneously, we will have to omit the word "any" between the words "of and "law". That, in our opinion is not permissible. Our Constitution clearly defines the jurisdiction of the Legislature, the Judiciary and the Executive. The power to enact or to amend an existing law is within the exclusive domain of the Legislature and while exercising the power of judicial review, the Courts will ordinarily refrain from treading into the field occupied by the Legislature. In other words, the Court will not take upon itself the task of enacting a law or making an amendment in an existing law by addition or omission by making an unwarranted assumption that the Legislature has not acted wisely while enacting a Statute. One of the well recognised principles of interpretation is that the Court will neither add words nor supply gaps or omission nor will it subtract words from a Statute. The Court will also avoid interpreting a Statute which will result in rendering surplus a provision of the Statute or some words thereof. In *Shrimati Hira Devi and Others Vs. District Board, Shahjahanpur*, the provisions of U.P. District Boards Act, 1922 (as amended in 1933) came up for consideration before the Supreme Court. While reversing the order of the Allahabad High Court, the Supreme Court observed as under :

"....It would be an unwarranted extension of the powers of suspension vested in the Board to read, as the High Court purported to do, the power of suspension of the type in question whose sanction is necessary. It was unfortunate that when the Legislature came to amend the old Section 71 of the Act it forgot to amend Section 90 in conformity with the amendment of Section 71. But this lacuna cannot be supplied by any such liberal construction as the High Court sought to put upon the expression "orders of any authority whose sanction is necessary". No doubt it is the duty of the Court to try and harmonise the various provisions of an Act passed by the Legislature. But it is certainly not the duty of the Court to stretch the words used by the Legislature to fill in gaps or omissions in the provisions of an Act."

(Italicising is Ours).

In *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, their Lordships of the Supreme Court interpreted Section 96(2) and (6) of the Motor Vehicles Act, 1939. One of the arguments urged before the Supreme Court was that the word "also" should be added after the word "sum" in Section 96(2). Rejecting the argument, the Supreme Court observed that it is not permissible to add words in the Section unless the Section as it stands is meaningless or of doubtful meaning. The Supreme Court further held that Section 96(2) of the Motor Vehicles Act, 1939 was neither vague nor meaningless and therefore, there was reason to add the word "also" after the word "sum".

11. In *C.V. Raman v. Management of Bank of India* (1988-II-LLJ-423), the expression "establishment under Central Government" used in the Tamil Nadu Shops and Establishments Act, 1947 came up for interpretation before the Supreme Court. It was urged on behalf of the workman that the banks are

autonomous bodies having distinct juristic entity and they cannot be treated to be owned by the Central Government. Their Lordships declined to accept the argument and observed that in order to uphold the submission of the learned counsel, the word under will have to be substituted with the word "of in Section 4(1)(c) of the Act and as the Legislature has not used the word "of instead of the word "under" the Court cannot substitute, the word used in the Statute.

12. Keeping these principles in view, we have no hesitation to hold that the word "commercial" cannot be added between the words "and" and "establishments" used in Section 1(3)(b) of the Act and, therefore, the expression "shops and establishments" used in that Section cannot be restricted to the shops and commercial establishments as defined in the Act of 1958. Rather, for giving effect to the beneficent Statute enacted by the Parliament, it will be quite legitimate to consider all those establishments falling within the ambit of Section 1(3)(b) which are governed by any law applicable in the State of Haryana.

13. In *State of Punjab v. The Labour Court, Jullundur and Ors.* (1981-I-LLJ-354) the question which fell for consideration by the Supreme Court was whether the provisions of the Act of 1972 are applicable to an employee of the Hydel Bari Doab Construction Project which was undertaken by the Hydel Department of the Government of Punjab. It was urged on behalf of the State of Punjab that the provisions of the Act of 1972 are not applicable to the employees of the project because it does not fall within the scope of Section 1(3)(b) of the Act. Rejecting the argument of the learned Additional Solicitor-General, the Supreme Court observed at p. :

"It is urged for the appellant that the Payment of Wages Act is not an enactment contemplated by Section 1(3)(b) 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 the 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 establishments". 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 & 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 noncommercial 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 noncommercial. The Punjab Shops & Commercial Establishments Act does not relate to all kinds of establishments. Besides shops, it refers 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) applies 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 include an industrial establishment within the meaning of Section 2(ii)(g) of the Payment of Wages Act. Accordingly, we are of the 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 the Payment of Gratuity Act applies to it."

14. In *Chaman Lal v. Municipal Committee, Panipat*, 1985-1 87 P.L.R 514, a learned Single Judge of this Court relied upon the above quoted observations of the Supreme Court in *State of Punjab v. Labour Court, Jullundur and Ors.* (supra) and two, other judgments of this Court in 1 *Udham Singh Chauhan v. Municipal Committee*, C.M. No. 2173-CII of 1983 decided on May 24, 1984 (Single Bench) and C.W.P. No 1662 of 1984 *Ram Singh v. Municipality, Ambala*, decided on August 16, 1984 (Division Bench) and held that the employees of the Municipalities are covered by the provisions of Section 1(3)(b) of the Act. In *Kundan Lal Narang's case* (supra) the, Division Bench approved the ratio of decision in *Chaman Lal's case* (supra) and observed :

"With respect, we entirely concur in that view. The learned counsel for the respondents, however, drew our attention to the Notification dated January 23, 1982, issued u/s 1(3)(c) of the Act, whereby the provisions of: the Act had been made applicable to the Local Bodies and it was contended that issuance of such a notification by the Central Government was indicative of the fact that the establishments like Local Bodies were covered by Section 1(3)(c) of the Act, and not by Section 1(3)(b) of the Act, otherwise there would have been no necessity of issuing such notification.

In our opinion, there is no merit in this contention. Perusal of Section 1(3)(b) of the Act would show that the Act was to apply to such establishments as were covered by any law relating to establishments and applicable in a given State.

Question arises as to what was to happen to an establishment which was not covered by any such law. Such establishments were to fall in Section 1(3)(c) and the Act was to become applicable only if a notification was to be issued by the

Central Government as envisaged by Section 1(3)(c) of the Act would not conclusively indicate that such establishments as are being now covered could not have been covered already by the provisions of Section 1(3)(b) of the Act."

15. The High Courts of Delhi, Rajasthan, Kerala, Madras and Bombay have followed the ratio of the judgment of *State of Punjab v. Labour Court, Jullundur and Ors.* (supra) and accepted the plea of the employees of the municipalities and other similar institutions that they are covered by Section 1(3)(b) of the Act

16. In *Municipal Corporation of Delhi v. Smt. V.T. Maresh and Anr.* (1986-I-LLJ-323) (Del), Yogeshwar Dayal, J. (as he then was) relied on the observations made in *State of Punjab v. Labour Court, Jullundur* (supra) and held at p. 325 ;

"It will be noticed that the word "establishment" used in the aforesaid clause of Payment of Gratuity Act, 1972 is not controlled by any type of establishment. It will include commercial, public sector establishment, private sector establishment as also the non-commercial establishment. Therefore, it is merely because Municipal Corporation of Delhi which is created by Delhi Municipal Corporation Act, 1957 is also a local body or local authority, it does not mean that the Corporation will not be an "establishment" so long as it is so in relation to any law relating to "establishment". It need not multiply the instances. Only one is sufficient to make the Act applicable. I have, thus, no doubt that the Municipal Corporation of Delhi is an "establishment" within the meaning of S.I. Sub-section (3) Clause (b) of the Act."

17. In *Municipal Board, Gangapur v. Controlling Authority under Payment of Gratuity Act, Bhilwara*, 1987 L.I.C. 575, a learned Single Judge of Rajasthan High Court followed the decision of the Supreme Court in *State of Punjab v. Labour Court, Jullunder* (supra), *Executive Engineer (Construction) Southern Railway, Quilon v. M.P. Sankara Pillai*, 1981 L.I.C. (NOC) 143 and *Chamanlal v. Municipal Committee, Panipat* (supra) and held that Municipal Board is covered by the definition of "establishment" under the Payment of Gratuity Act. Some of the observations made by the learned Single Judge of Rajasthan High Court are :

"The definition of establishment defined under Payment of Wages Act, 1936 is too wide and it includes that any authority who is involved in construction, development or maintenance of buildings, roads, bridges or canal etc. then such authority shall be establishment. Municipalities are responsible for maintenance of buildings as well as roads and bridges within municipal limits. Thus the definition of establishment includes municipalities."

18. In the very same judgment, the learned Single Judge rejected the argument made on behalf of the Municipal Board that the provisions of the Act cannot be applied to the employees of the Municipal Board because they are governed by the provisions contained in the Rajasthan Municipalities (Contributory Provident Fund and Gratuity) Rules, 1969. While doing so, the learned Single Judge observed :

"Section 14 overrides the other Rules or Act made on the subject by virtue of these provisions. Rules of 1969 will have no role to play, so far as they are inconsistent with the Act. Thus the Payment of Gratuity Act will cover the municipalities for the payment of gratuity and not the Rules of 1969. Moreover, this is social legislation and it should be given more extensive application."

19. In *Nagar Palika Moradabad v. Appellate Authority and Addl. Labour Commr. U.P. Kanpur and Ors.*, (1990-II-LLJ-156), the Allahabad High Court rejected the argument advanced on behalf of the petitioner Nagar Palika that the word "establishment" used in Section 1(3)(b) connotes some business institution by holding that the Municipal Committee being a public institution is covered by Section 1(3)(b).

20. In *Administrator, Shri Jagannath Temple, Puri v. Jagannath Padhi and Ors.*, (1992-II-LLJ-863), the Orissa High Court held that the Act is not restricted to only commercial establishments but it applies to all establishments within the meaning of any law for the time being in force in relation to shops and establishments in a State.

21. In *K. Gangadhar and Ors. v. The Appellate Authority under Payment of Gratuity Act and Ors.*, (1993-I-LLJ-342), while interpreting the provisions of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and the Payment of Gratuity Act, 1972, the Andhra Pradesh High Court relied on the Supreme Court in *State of Punjab v. Labour Court, Jullunder* (supra) and also judgment of the Bombay High Court in *B.N. Sarada Pvt. Ltd. v. Kisan K. Borada* (1981-I-LLJ-190), and observed that the word "establishment" used in Section 1(3)(b) of the Act of 1972 is comprehensive in nature and ruled that the provisions of the Act of 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 the establishment as contemplated by the provisions of Section 1(3)(b) of the Act.

22. In *Poona Cantonment Board v. S.K. Das and Ors.* (1993-II-LLJ-487), the Bombay High Court held that a Cantonment constituted under the Cantonments Act, 1974 is an establishment within the meaning of Section 1(3)(b) of the Act. While doing so, the learned Judge relied on the decision of the Supreme Court in *State of Punjab v. Labour Court, Jullunder* (supra).

23. On the basis of the above discussion, we hold that the decision in *Kundan Lal Narang's* case lays down the correct proposition of law and the learned Single Judge has not erred in granting relief to some of the writ petitioners on the basis of the law laid down in the said case.

24. In the result, the appeal fails and the same is dismissed. The interim stay order passed on May 3, 1988, automatically stands vacated.