

(2010) 05 OHC CK 0001

In the Orissa High Court

Case No : Writ Petition (Civil) No. 13892 of 2005

Paradeep Port Trust

APPELLANT

Vs

A. Controlling Authority and Others

RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:

Major Port Trusts Act, 1963 — Section 2, 28, 3, 3(1)
Payment of Gratuity Act, 1972 — Section 1, 1(3), 10, 11, 12
Ports Act, 1908 — Section 2, 3

Citation : (2010) 110 CLT 338 : (2010) 2 ILR (Ori) 810 : (2010) 4 LLJ 815

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Mishra, J.—The short question that arises for determination in this Writ Petition is whether the Paradeep Port Trust, a Major Port is governed by the Payment of Gratuity Act, 1972, hereinafter to as "the Act" for brevity. -

2. Some of the retired employees of the Petitioner-trust, i.e. Paradeep Port Trust have filed several petitions before the controlling Authority. i.e. Opp. Party No. 1 for payment of differential amount of gratuity under the Act & seeking various other relief under the Act. On the basis of such applications, the Controlling Authority issued notice to the Petitioner-trust directing it to show-cause why relief sought under the Gratuity Act shall not be granted to the employees. Petitioner preferred a writ petition bearing no 8957 of 2005 seeking to quash the notices issued by the Controlling Authority on the plea of lack of jurisdiction.

3. Petitioner claimed that it being a "Major Port" is not coming under the applicability of the Gratuity Act as the relevant Section does not make the Act applicable to Major Port though the Ports are included in the Act Major Port is governed under the Major Port Trust Act, 1963, hereinafter referred to as the "MPT Act", & the said Act gives the Board independent powers to make regulations for payment of gratuity along with other service conditions subject to

approval of Central Government, The Petitioner-trust has drafted its own regulations & sent the same for approval to the Central Government. Petitioner-trust functions under the Central Government as the Central Government has the ultimate power & control to frame rules directions supersede the Board & inspect to work, appoint the Chairman & Board of Trustees, as it is a statutory authority under the "MPT Act". In the aforesaid Writ Petition, this Court directed the Petitioner-trust to raise preliminary objection before the Controlling Authority with regard to applicability of the Payment of Gratuity Act to the Paradeep Port Trust. The Court further directed that the said objections shall be decided first before proceeding with the hearing of the case. Pursuant to the Hon'ble Court's directions, the Petitioner-trust raised the preliminary objection, which was negated by the Controlling Authority by the Order Dated 19.09.2005. Petitioner-trust assails such order on the ground that it is bad in law, misconceived, based on conjectures & surmises. Hence, Petitioner-trust prayed to quash the order passed by the Controlling Authority.

4. Opp. Party Nos. 2 to 7 have filed their counter affidavit, inter alia, pleading that the Paradeep Port Trust, hereinafter referred to as the "P.P.T." has been declared as a "Major Port" by the Central Government. The Central Government has appointed the Assistant Labour Commissioner (C), Bhubaneswar as the Controlling Authority under the provisions of the Gratuity act in relation to establishment for the State of Orissa P.P.T. is one of them & comes under the coverage of the Act & jurisdiction of the Assistant Labour Commissioner (C), Bhubaneswar. Opp. Parties also contended that an appeal lies from the order of the Assistant Labour Commissioner (C), Bhubaneswar to the Appellate authority & hence, the Writ Petitioner is not maintainable.

5. The specific case of the Opp. Parties is that P.P.T. is a Port Trust & constitution of Paradeep Port Trust Board is for management of the Port. It's employees were neither in State nor in Central Government service. They became employees of Trust Board, which is an autonomous body. It is further pleaded that the activities/functions of Port & Major Port are very similar. Hence, there is no difference in nature of employees". It is further contended that the major ports are governed by the Industrial Dispute (Regulation & Abolition) Act, 1971. It is further contended that the Major Port Trust is covered under the Act.

6. It is further contended by the Opp. Party Nos. 2 to 7 that as per the Resolution to Agenda No. 4 (01)/2006-07 of the Paradeep Port Trust Board, a proposal for common regulation for payment of retirement benefits has been dropped in view of the instruction of the Ministry of Shipping & Transport conveyed in its letter NoA-38011/4198-PE-1, dated 19.12.2005 with the direction to amend the present rules in the light of said draft model Pension Regulation. The said regulation was taken effect from 01.04.1995. Accordingly, as per the direction of the said Ministry in their letter dated 04.05.2006, PPT/Petitioner considering the applicability of the Gratuity Act to Port Trust approved the payment of gratuity under the Gratuity Act since it is beneficial to the employees. Said decision was

taken in the meeting of the Board held on 22.06.2006. Accordingly, an Office Memorandum dated 02.08.2006 (Annexure-H) was issued for implementation & it was directed that the payment of gratuity shall be governed by the Payment of Gratuity Act, 1972.

7. Subsequently, the P.P.T. has issued an Office Memorandum on 29.09.2006 (Annexure-1) for imposing restriction in payment of gratuity w.e.f. June, 2006. The Opp. Parties have contended that such restriction is inequitable. It is further contended that in the draft Pension Regulation, which was drafted by the Board of Trustees of P.P.T. under their Resolution No. 17/00-01 dated 05.07.2000, have accepted payment of gratuity under the Gratuity Act as it is more beneficial to the current vogue.

8. Opp. Parties admitted that the Board of Trust is of the P.P.T. has the power to frame rules & regulations for payment of retirement benefits to their employees. It has adopted the Central Government Rules & thus the Act is also applicable to the P.P.T. It is further submitted that the employees of the P.P.T. come under the definition employees in the Act & the P. P. T. itself is the employer & thus they are liable to be governed under the provisions of the Act.

9. In course of hearing, Learned Counsel for the Petitioner-trust emphasized that the expression "Major Port" in clause-(a) of Sub-section (3) of Section 1 of the Payment of Gratuity Act, which provides for the application of the Act to factories, mines, shops, etc. Learned Counsel for the Opp. Parties, on the other hand, contended that the word "Port" encompasses "Major Port" & there being no difference between the functions of employees of a "Port" or a "Major Port". Hence it is argued that the application of the Payment of Gratuity Act cannot be denied to the employees of a Major Port.

10. It is not disputed that the Pradeep Port Trust was declared to be a "Major Port" by virtue of Notification No. 516, dated 27.09.1967 published in the Gazette of India. There is also no dispute that in the Section 1 of the Act, which delineates the application of the Act, does not refer to "Major Port". It is apposite to quote Section 1 of the Payment of Gratuity Act, which reads as follows.

1. Short title, extent, application & commencement (1) This Act may be called the PAYMENT OF GRATUITY Act, 1972.

(2) It extends to the whole of India; Provided that insofar as it relates to plantations or ports, it shall not extend to the State of Jammu & Kashmir;

(3) It shall apply to-

(a) every factory, mine, oilfield, plantations port & railway company,

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops & establishments in State, in which ten or more person 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.

(4) It shall come into force on such date as the Central Government may, by notification, appoint" (emphasized for appreciation)

Section 2(a) defines "appropriate Government" means (i) in relation to an establishment; (a) belonging to, & under the control of Central Government (b) having branches more than one State. (c) of a factory belonging to, or the control of, Central Government (d) of a major port, mine, oilfield or railway company, the Central Government, (e) in any other case, the State Government.

Sub-Section (i) of Section 2 defines "major port" has the same meaning assigned to it in Clause (8) of Section 3 of the Indian Ports Act, 1908, hereinafter referred to as the I.P. Act. The said Section 2 of clause "n" defines "port" has the same meaning assigned to it in Clause (4) of Section 3 of the Indian Ports Act, 1908.

11. The Indian Ports Act defines "Port" at Sub-section (4) of Section 3 to include also any part of river or channel in which that Act is for the time being in force. Sub-section (8) of Section 3 of the Indian Ports Act defines "Major Port" as any port which the central Government may, by notification in the official Gazette declare or may under any law for the time being in force have been declared to be a major port.

12. The definition of "Major Port" comes in the Indian Ports Act. Further at Clause (q) of Section 2 of the Major Ports Act, Port has been defined as follows:

(q) "Port" means any major port to which this Act applied within such limit as may from time to time be identified by the Central Government for the basis of this Act by notification in the office Gazette, & until the notification is issued, within such limits, as may have been defined by the Central Government under the provisions of the Indian Port Trust Act.

13. The Indian Ports Act was enacted with a view to consolidate the enactment relating to Port and Port charges. The statement of objects & reasons of the said Act reveals that this is a purely consolidating bill. The Indian Ports Act, 1908 has been amended by five other Acts. The object of the Indian Ports Act, 1908 (15 of 1908) was to collect provisions of six Acts & to incorporate them into one Act. The rationale behind it is to make the law more easily ascertainable & to substitute one Act in place of six on the statute book. The Indian Ports Act governed the field, however the Major Ports of Calcutta, Bombay & Madras were administered by respective Port Trusts whereas the Major Ports of Viskhapatanam, Kochi & Kanda were directly administered by the Government of India. To make statutory provision for Port Trust to control the later three Major Ports provisions have been made in the Major Port Trust Act, 1963. It is seen that the Act has been enacted to make provisions for the constitution of Port

authorities for certain Major Port in India & to vests the administration, control & management of such ports of any such authority & the matters connected therewith.

14. The essential difference between a Port & a Major Port is that a Port is used as generic term whereas Major Port is a particular species of Ports. Secondly, the Ports are governed by the State Government whereas Major Ports are governed by a Board of Trustee, which is nominated u/s 3 of the M.P.T. Act by the Central Govt. u/s 28 of the said Act the Board of Directors has been given the power to frame rules & the scheme regarding payment of gratuity, etc. to its employees. In this background the provision of the payment of Gratuity Act, 1972 has to be examined to come to a correct conclusion. I have already taken note of Section 1 of the Act. Section 2 defines "appropriate Government". Section 2(a) defines appropriate Government means for a major port, mine, oilfield or railway company is the Central Government.

15. Section 3 of the Act provides that the appropriate Government may, be notification appoint any officer to be the controlling authority, who shall be responsible for the administration of the Act & different controlling authorities may be appointed for different areas. Section 4 of the Act provides for payment of gratuity. Section 4-A provides for compulsory insurance by the employer for his liability towards payment of gratuity under the Act. Such provision is to be effective from the date as notified by the appropriate Government. Section 5 of the Act provides that the appropriate Govt. may, by notification & subject to conditions as may be specified, exempt any establishment, factory, etc, from the operation of the Act. Section 6 provides for nomination facility of the employee. Section 7 provides for determination of amount of the gratuity. Section 7A & 7B provide for appointment of Inspectors by appropriate Government & their powers.

16. The most important Section is Section 8 of the Act wherein the procedure for recovery of gratuity has been provided. This Section lays down that if the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on a application made to it in this behalf by the aggrieved person, issued a certificate for the amount to the Collector, who shall recover the same, together with compound interest thereon on such rate as the Central Government may, by notification, specify, from the date of expiry of prescribed time, as arrears of land revenue & pay the same to the person entitled thereto. It is provided that the controlling authority shall, before issuing a certificate under the Section, give the employer a reasonable opportunity of showing cause against the issue of such certificate. It is further provided that the interest payable under the Act shall not exceed the amount of gratuity payable under this Act.

17. Another important provision is Section 9 of the Act, which provides for penalties. Sub-section (1) of the said Section provides that whoever, for the purpose of avoiding any payment to be made by himself under the Act or of enabling any other person to avoid such payment, knowingly makes or causes to

be made any false statement or false representation, shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs. 10,000. Sub-section (2) of the said Section provides that an employer who contravenes, or makes default in complying with any of the provisions of the Act or any rule or order made thereunder shall be punishable with imprisonment for a term, which shall not be less than 3 months but which may extend to 1 year or with fine which shall not be less than Rs. 10,000 or both, Sub-Section 10 of the said Section provides for exemption of employer from liability in certain cases. Section 11 provides for cognizance of offences. Section 12 provides for protection of action taken in good faith & Section 13 provides for protection of gratuity. Another important provision in Section 14, which provides that the provision of the Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained any other enactment other than this Act. Section 15 provides for the power of appropriate Government to make rules for the purpose of carrying out the provisions of the Act.

18. Learned Counsel for the Petitioner submitted that the plain meaning of Section 1 of Sub-Section 3 has to be taken into account & since Major Port has not been included in the establishments to which the Act applies, the order passed by Assistant Labour Commissioner (C) has to be set aside.

It is not disputed that the literal rule of interpretation of statute requires that the words in a statute should be used in their ordinary meaning. Maxwell in his book the Interpretation of Statutes (12th Edition by P. S. J. Langan), Chapter-2 page 28, writes:

the first & most elementary rule of construction is that it is to be assumed that the words & phrases of technical legislation are used in their technical meaning if they have acquired, one, & otherwise in their ordinary meaning, & second it that the phrases & sentences are to be construed according to the rules of grammar

Maxwell is of the further opinion that it is natural corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify inference that the legislature intended something which it omitted to express. A construction which would leave without effect any part of the language of a statute will normally be rejected. At page 43, Maxwell speaks about the golden rule of construction. He quotes Parke B, as follows:

It is a very useful rule, in the construction of a statute, to adhere to the ordinary meaning of the words used, & to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which the case the language may be varied or modified so as to avoid such inconvenience, but no further.

This is a really modified of a literal rule of construction.

19. This is a case, where on the face of it, it is apparent that though the Indian Parliament did not include the word "Major Port" in the application clause while defining appropriate Government at Section 2(a) of the Act, it has provided that for the purpose of a Major Port, mine, oil field or railway company, the Central Government is the appropriate Government. Section 8 of the Act lays down that if the amount of gratuity is not paid, then an application can be made to the controlling authority, who shall take appropriate steps for the purpose of realisation of the same. Section 2(d) defines "Controlling Authority" as an authority appointed by the appropriate Government. It is also undisputed that the Central Government has appointed the Assistant Labour Commissioner (C), Bhubaneswar, i.e. Opp. Party No. 1, as the controlling authority for the purpose of the Act in the State of Orissa. If the parliament had no intention of including "Major Port" within the scope of the Act, would not have provided in Section 2(a) that for the "Major Port" among others like Railways etc. the appropriate Government is the State Government. Thus, a harmonious construction of Sections 1, 2(a), 3, 4, 7 & 8 leaves no doubt in the mind of the Court & infact, it is very crystal clear that the use of weird "Port" under the application clause of the Act is used as a generic term which means Ports including Major Ports otherwise the very purpose the Act would be frustrated & it would lead to a manifest absurdity.

20. From the above discussion, this Court comes to the definite conclusion that the Major Ports are governed by the Payment of Gratuity Act. The fact that the Board of Directors have framed rules for payment of gratuity, will not absolve the PPT from payment of gratuity because of Section 14 of the Act. The Supreme Court in *Municipal Corporation of Delhi Vs. Dharam Prakash Sharma and Another*, has laid down that mere fact gratuity is provided under the Pension Rules will not disentitle the employees to get payment of gratuity under the Payment of Gratuity Act in view of the overriding provisions contained in Section 14 of the Act the provision for gratuity under the Pension Rules will have no effect possibly for this reason Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion of he employees of such establishments are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act. In this case, there is no such plea that PPT has been exempted from payment of gratuity by the Central Government u/s 5 of the Act. Rather the Learned Counsel for Opp. Party No. 2 to 7 has brought to the notice of the Court, a letter issued by the Government of India, Ministry of Transport and Shipping (Port Wing) being No. A-29018/1/91 P.E.I, New Delhi, dated 19.03.1996 wherein the Central Government has clarified that w.e.f. 24.05.1994 payment of gratuity by all Major Ports shall be regulated as per the provisions of Payment of Gratuity Act, 1972.

Thus, the order passed by the Assistant Labour Commissioner(C), Bhubaneswar is correct, which requires no interference. The Writ Petition is accordingly devoid of any merit & the same is dismissed at the stage of admission No Costs.