

(1972) 01 OHC CK 0017

In the Orissa High Court

Superintending Engineer, National Highway Project

APPELLANT

Vs

Baidhar Lenka and Another

RESPONDENT

Date of Decision : 28-01-1972

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C

Citation : (1972) 38 CLT 418 : (1972) 2 LLJ 356

Hon'ble Judges : G.K. Misra, C.J;B.K. Ray, J

Bench : Division Bench

Judgement

G.K. Misra, C.J.—The petitioner is the Superintending Engineer, National Highway Project under Works and Transport Department of the Government of Orissa. The National Highway Project was established by the State Government with the aid of the Central Government from the funds of the International Development Association and is being controlled and managed as a departmental activity by the works department of the Government of Orissa under the direct supervision and control of officers who are civil servants appointed by the State Government. Opposite Party 1 was appointed as a roller-helper with effect from 1-7-63 under the defunct Baripada highway division. He was subsequently promoted to the post of roller-driver with effect from 1-9-64. He worked for some time. Again he was appointed as a roller-driver with effect from 20:3-67 by the Assistant Mechanical Engineer, Balasore, with the approval of the Executive Engineer, Balasore highway division. The terms and conditions of his appointment were that the post was purely temporary and might be terminated without any prior notice. When the project work came to a close, the services of opposite party 1 were no more required and his services were terminated with effect from 14-11-68 (A.N.) after expiry of one month's notice.

2. Opposite party 1 filed an application (Annexure A) u/s 33C(2) of the Industrial Disputes Act, 1947 (hereinafter to be referred to as the Act) before the Presiding Officer, Labour Court, Orissa, Bhubaneshwar (opposite party 2) claiming to be entitled to receive from the petitioner certain benefits which are capable of being

computed in terms of money and with a prayer that opposite party 2 do determine the amount due to opposite party 1. The case was posted for hearing to 30-3-70. The petitioner was away at Delhi on some unavoidable work immediately preceding the date of hearing. A petition for adjournment (Annexure B) filed by the petitioner was rejected by opposite party 2. The case was heard and disposed of on the date fixed by order (Annexure C). By the impugned order opposite party 2 allowed the application of opposite party 1 and directed that he was entitled to receive an amount of Rs. 415-00 from the petitioner as retrenchment compensation. The writ application has been filed under Articles Section 226 and 227 of the Constitution for quashing the impugned order (Annexure C).

3. The only contention urged on behalf of the petitioner is that the National Highway Project of the Works Department is not an industry and opposite party 1 is not a workman. He was a Government servant appointed purely on temporary basis his services being terminable without any notice. He is, therefore, not entitled to claim any benefit u/s 33C(2) of the Act.

4. Section 33C(2) of the Act runs thus:

Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or/as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government.

5. The question for consideration, therefore, is whether opposite party 1 is at all a "workman" in an industry. In other words, whether the National Highway Project of the works department is an "industry".

6. In the amendment application filed on behalf of the petitioner, the real character of the National Highway Project was indicated. There was no objection to the amendment. It was stated therein that the National Highway Circle was created for the improvement of National Highway No. 5 and part of National Highway No. 6 extending from Cuttack to the border of the State of Bihar. The required expenditure for the improvement of National Highway was met from the financial grant made by the International Development Association. The aforesaid grant was made to India by the International Development Association through the World Bank. By way of allocation to the different States the Government of India allocated a definite sum of money to the State of Orissa and with that allocation the State Government created the National Highway Circle in the year 1961 for the improvement of the National highways. The functions of the National Highway Circle were sovereign functions of the State and the National Highway Circle is not an industry. It is a department of the Government of Orissa managed and conducted in the manner in which all other departmental activities of the works department are done. It is not a trade or business that is carried on.

The development of National highway was being done for transport and administrative facilities without any profit-motive. The function of the National Highway Project was to widen the formation width of the old existing National highway and to strengthen the crust (metalled portion at the middle of road) and also to construct major bridges, minor bridges and culverts, also the National Highway No. 5.

7. As to what is an "industry", the matter has been concluded by The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi, . All the previous decisions of the Supreme Court were considered in this case and the earlier decision in The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, , was overruled. After fully analysing the position, the Constitution Bench of the Supreme Court consisting of six Judges held that before the work engaged in could be described as an "industry", it must bear the definite character of "trade" or "business" or "manufacture" or "calling" or must be capable of being described as an undertaking resulting in material goods or material services. It is not necessary that there must be a profit-motive; but the enterprise must be analogous to trade or business in a commercial sense.

8. Applying the aforesaid test to the National Highway Project, which is entirely controlled and managed by the Public Works Department, there is no escape from the conclusion that the project is not an "industry". It is not analogous to trade or business in a commercial sense. Though existence of profit-motive is not an essential pre-requisite in this case, in the matter of construction and control of this Project there is absolutely no profitmotive. It is carried on as a part of sovereign activity of the Government for convenience of administration and transport. Construction of roads constitutes an essential feature of the sovereign power for administrative purposes. National Highway Project is one such activity. It is not an industry and opposite party 1 is not a workman employed in such industry. He was purely a temporary Government servant whose services were terminable without notice. He is not entitled to any relief u/s 33C(2) of the Act.

9. In the result, the writ application is allowed. A writ of certiorari be issued quashing the impugned order (Annexure C) passed by opposite party 2. In the circumstances, there will be no order as to costs.

B.K. Ray, J.

10. I agree.