
(1994) 01 BOM CK 0052
In the Bombay High Court
Case No : F.A. No. 436 of 1992

Vasudev Anant Kulkarni

APPELLANT

Vs

Executive Engineer, M. S. E. B.

RESPONDENT

Date of Decision : 11-01-1994

Acts Referred:

BOMBAY SHOPS AND ESTABLISHMENTS ACT, 1948 — Section 13, 14, 15, 17, 18
Civil Procedure Code, 1908 (CPC) — Section 44A
WORKMENS COMPENSATION ACT, 1923 — Section 2(1)(n)

Citation : (1994) 2 ACC 435 : (1995) ACJ 97 : (1995) 1 LLJ 496 : (1994) 1 MhLj 960

Hon'ble Judges : A.D. Mane, J;A.A. Halbe, J

Bench : Division Bench

Judgement

A.D. Mane, J.—A twin question of law is raised in this case, first of which relates to the scope and extent of Section 38-A of Bombay Shops and Establishments Act, 1948 (for short, the Bombay Act applies is entitled to claim compensation for a personal injury caused to him by accident arising out of and in the course of his employment from his employer, as workman under the provisions of Workman under the provisions of Workmen's Compensation Act, 1923.

2. The material facts which gave rise to this appeal are as follows :

"The appellant is in employment with the respondent Maharashtra State Electricity Board (for short, the Board) in a clerical cadre at Ahmednagar. On 18-10-1985 he was directed by the Assistant Engineer as well as by Senior Upper Division Clerk to collect ledger books in connection with agricultural electric motor pumps from the office of the Executive Engineer, Rural Division, Ahmednagar. Those ledger books were urgently required in the office of Sub-Division, Pathardi where at the relevant time, the appellant was working. The nagar at about 5.00 p.m. He went in the Divisional Account's Office and asked for the ledger books. The ledger books were not available in that office. He was, therefore, advised to enquire with the office of Urban Division. Ahmednagar. The

appellant accordingly, went to the office of Urban Division, Ahmadnagar, but he was asked to come on 19-10-1985, he went to the office of Urban Division at about 8.35 a.m. to collect the ledger books. He collected ledger books and he was proceeding to Pathardi. He had kept the ledger books on his bicycle. On his way, the ledger books fell on the ground from his bicycle. While keeping the ledger books on the carrier of his bicycle, a spring of bicycle sprung and hit his left eye. There was an injury to his eye, for which he was required to be admitted in hospital at Ahmednagar.

3. The case of the appellant is that he suffered injury i.e., loss of vision by his left eye in the course of his employment with the respondent-Board and, therefore, he was entitled to receive the compensation under the provision of Workmen's Compensation Act, 1923. As his request was turned down by application (W. C.) No. 54/1987, inter alia, claiming compensation of Rs. 40,770/- and 50% penalty with interest at the rate of 18% P. A.

4. The respondent-Board filed written statement at Exh. 15 and disputed the claim of the appellant. It has been stated that the injury suffered by the appellant was entirely on account of his own act and not in course of his employment and he was, therefore, not entitled to claim any compensation. Secondly, it has been submitted that the appellant is not "workman" as defined u/s 2(1)(n) of the Workmen's Compensation Act, 1923. On that count also, he was not entitled to get any compensation from the respondent. In this context, it has been submitted that the appellant has been receiving wages exceeding Rs. 1,700/- per month and as such he is not covered under the definition of "workman" and, therefore, his application was liable to be dismissed.

5. The Commissioner for Workmen's Compensation (for short, the authority below framed following material issues :

"1. Does the applicant prove that he has received personal injury arising out of and in the course of his employment with the opponent ?

2. Is applicant entitled to receive any compensation if yes, to what extent?

1a. Does applicant prove that he is the workman?

1b. Is opponent proper authority to this proceeding?

2b. Whether this application is tenable in law ?....."

At the trial of the application, the appellant examined himself and adduced evidence of two witnesses, including Doctor, in support of his claim. He has also produced certain documents. The Board, however, did not examine any witness not produced any document.

6. On going through the material evidence. On issue No. 1, the authority below has held that the appellant has proved that he received personal injury which has arisen out of and in the course of his employment with the respondent-Board.

7. The authority below, however, on issues Nos. 1a and 2 has held that he appellant is not a "workman; within the meaning of "workman" as defined in Section 2(1)(n) of the Workmen's compensation Act, 1923 and, therefore, he was not entitled to claim compensation under the Workmen's Compensation Act, 1923. By the impugned order, the authority below directed that the application be returned to the appellant for presentation before the proper authority.

8. Shri Gursahani, learned counsel for the appellant strongly urged that the view taken by the authority below is contrary view taken by the authority below is contrary to law and is otherwise unjust and improper. The learned counsel argued that the appellant is Workmen's Compensation Act, 1923 by virtue of provision contained in Section 38-A of the Bombay Act. Section 38-A of the Bombay Act, inter alia provides that the provisions of the Workmen's Compensation Act, 1923 and the Rules framed from time to time thereunder are "mutatis mutandis" applicable to employees of an establishment to which the Act applies as it they were workmen within the meaning of Workmen's Compensation Act, 1923. The learned counsel submitted that the respondent-Board is an establishment covered under Schedule II at Sr. No. 102 except Sections 35, 36, 37 and 62 of the Bombay Act. The word "employee" as defined in Section 2(6) of the Bombay Act means "a person wholly or principally employed, whether directly or through any Agency and whether for wages or other consideration in or in connection with any establishments; and includes an apprentice but does not include a member of the employer's family and, therefore, it will not be proper to import the meaning of word "workman" as defined in Section 2(1)(n) of the Workmen's Compensation Act, 1923. The learned counsel Shri Gursahani, further argued that there is a legal fiction imported from Bombay Act for construing the employees of the Board as Workmen under the Workmen's Compensation Act de hors the definition of the workmen in the Workmen's Compensation Act, 1923. The employee of the Board can, therefore, approach the authority below for the compensation, under the above provisions for the injuries suffered by him in the course of his employment.

9. On the other hand, Shri Joshi, the learned counsel appearing for the respondent-Board while supporting the view taken by the authority below argued that it is not enough that the appellant is an employee within the meaning of word "employee" as defined in Section 2(6) of the Bombay Act. To maintain his application for compensation under the Workmen's Compensation Act, 1923, he has further to prove that he is a workman within the meaning of word "workman" as defined in Section 2(1)(n) of the Workmen's Compensation Act, 1923. In this context, the learned counsel referred to schedule II which contains list of persons, who subject to the provisions of Section 2(1)(n) are included in the definition of workmen. The relevant item in this appeal in the list is at Sr. No. (i). It says that "any person is a workman within the meaning of Section 2(1)(n) and subject to the provisions of that section, who is employed, otherwise than in a clerical capacity....." The learned counsel for the respondent board submitted that the appellant has been working in the clerical capacity and, therefore, he is

excluded from the category of workmen under the Workmen's Compensation Act, 1923 and therefore, his application was rightly returned by the authority below for presentation to the proper authority.

10. We have to consider the basic question as to whether an employee of any establishment to which Bombay Act applies, is a workman, within the scope of Section 38-A of the Bombay Act, with reference to the provisions contained in the Workmen's Compensation Act, 1923 so as to entitle him to compensation from his employer, for personal injury caused to him by accident arising out of and in the course of his employment. The long title is set out at the head of the Statute-Bombay Shops and Establishments Act, 1948 and gives a fairly full description of the general purpose of the Act : for instance, "..... An Act to consolidate and amend the law relating to the regulation of conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, other places of public amusement or entertainment and other establishments....." There is no dispute that the establishment of respondent-Board is an establishment covered under the Bombay Act. The respondent-Board is included as an establishment at Sr. No. 102 in schedule II of the Bombay Act. Schedule II also contains a provision to exempt certain sections of the Act. viz., Sections 35, 36, 37 and 62, which deal with provisions relating to leave with pay and payment of wages to employees and Section 13, 14, 15, 17 and 18 in case of outdoor staff and watchmen, subject to the condition that the employees concerned are granted wages for overtime work and one day holiday in a week without making any deductions from their wages on count thereof. Except these sections in the Bombay Act, the Act is applicable in respect of all employees of respondent-Board.

The word "employee" is defined in Section 2(6) of the Bombay Act as under :

"2(6) "employee" means a person wholly or principally employed, whether directly or through any agency and whether for wages or other consideration in or in connection with any establishment; and includes an apprentice, but does not include a member of the employer's family....."

Section 38-A of the Bombay Act, provides inter alia as follows :

"38-A. The provisions of the Workmen's Compensation Act, 1923 and the rules made from time to time thereunder, shall mutatis mutandis, apply to employees of an establishment to which this Act applies, as if they were workmen within the meaning of the Workmen's Compensation Act, 1923....."

For the meaning of expression "mutatis mutandis" and expression "as if" as used in Section 38-A as set out hereinabove, the learned counsel Shri Gursahani, cited some decided cases. In case of Corporation of Calcutta Vs. Sirajuddin and Others, the expression "mutatis mutandis" came to be interpreted as follows :

(Per Chakravarti, C. J. and S. R. Das Gupta, J.) :

"When a law directs that a provision made for a certain type of case shall apply

mutatis mutandis in another type of case, it means that it shall apply with such changes as may be necessary, but not that even if no change be necessary some change shall nevertheless be made".

"(Per Guha Ray, J.) : The expression "mutatis mutandis" in Section 364(2) of the Calcutta Municipal Act of 1923 is an adverbial phrase qualifying the verb "shall apply" and meaning "those changes being made which must be made". Literally therefore, sub-section (2) of Section 364 means nothing more and nothing less than this that in applying Section 363(2) to proceedings u/s 364(1) those changes must be made which the exigencies of the case may require. Necessarily then no changes need be made where none are called for and even where some changes are called for they must be kept within that bare minimum without which Section 363(2) cannot possibly be applied to the proceedings u/s 364(1) regard of course, being had to the nature and the scope of the proceedings to which it has to be applied".

"(Per Sarkar, J) : The words "mutatis mutandis" mean with the necessary changes being made". Some changes in Section 363(2) are considered by the Legislature necessary, when it is applied to a proceeding instituted u/s 364. In other words, some changes must be made for mutatis mutandis does not mean "with such changes" if any, as may be necessary but "with the necessary changes being made"....."

11. In case of Morlays (B'Ham) Ltd. Vs. Roshanlal Ramsahai and Another, , the words "as if" as used in Section 44-A of CPC came to be interpreted, to mean that the words "as if" have no wiser meaning with reference to scheme of Order XXI in respect of execution of decrees of foreign Courts.

12. In the first place, it is necessary to keep in view that Bombay Act is a beneficial legislation, which regulates the conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, other places of public amusement or entertainment and other establishments. This Act, however, does not contain any provision nor does it prescribe any procedure for compensation from his employer for a personal injury (sustained by any employee of any establishment) by any employee of any establishment) by accident arising out of and in the course of his employment. S. 38-A which we have reproduced earlier, was however inserted in the year 1961 applying provisions of Workmen's Compensation Act, 1923 and the rules made from time to time thereunder to employees of an establishment to which the Bombay Act applies, as if they were workmen within the meaning of "Workmen's Compensation Act, 1923".

13. The purpose of section is obvious to afford a remedy or facilitate an employee covered under Act to claim compensation from his employer for his personal injury received by him in an accident arising out of and in the course of the employment under the provisions of Workmen's Compensation Act.

14. It is true that the definition of the "workman" as defined in Section 2(1)(n)

of the Workmen's Compensation Act, differs from the definition of an "employee" as defined in Section 2(6) of the Bombay Act, because under the said definition "workman" means other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business, and who is not employed in any such capacity as is specified in Schedule II. In Schedule II, there is a list of persons, who, subject to the provisions of Section 2(1)(n) of the said Act are included in the definition of workman and as per Schedule II item (i) which is relevant for the purpose says "any person who is employed, otherwise than in a clerical capacity is a workman within the meaning of Section 2(1)(n) of the said Act....."

Indeed, at first sight one might not expect a person working in a clerical cadre to be so described as a workman in strict sense of the term "workman" as defined in Section 2(1)(n) of the Workmen's Compensation Act, yet, he fell within that description because of the indication given by Section 38-A which provided that provision of the Workmen's Compensation Act, 1923 and rules made from time to time thereunder, shall "mutatis mutandis" apply to employees of an establishment to which the Act applies, as if they were workmen within the meaning of Workmen's Compensation Act, 1923.

15. In order to properly interpret any of provisions of the Statute the Court is to see whether the terms of the section are such as fairly to carry out that object and no other and to read the section with a view to finding and to read the section with a view to finding out what it means and not with a view to extending it to somethings that was not intended. In order to understand the true scope and interpretation of Section 38-A of the Bombay Act, we would like to refer to observations of Apex Court in case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . In para 42, page 560 of the report, it is observed :

"..... Here we have to be cautions not to fall into the trap of definitional expansionism bordering on reductio ad absurdum not to truncate the obvious amplitude of the provisions to fit it into our mental mould of belief and prejudices or social philosophy conditioned by class interests. Subjective wish shall not be father to the forensic through, if creditability with a pluralist community is a value to be cherished "Courts do not substitute their social and economic beliefs for the judgment of legislative bodies....."

"To sum up, the personality of the whole statute, be it remembered, has a welfare basis, it being a beneficial legislation which protects labour, promotes their contentment and regulates situations of crisis and tension where production may be imperiled by untenable strikes and blackmail lockouts..."

16. The golden rule as often stated : it is very useful in the construction of a statute to adhere to the ordinary meaning of the word used; and to the grammatical construction unless that is a variance with the intention of Legislature, to be collected from the Statute itself, or leads to any manifest

absurdity of repugnance in which case in language may be varied or modified, so as to avoid such inconvenience, but no further. There is one more rule of construction of statute and it is that you must not imply something in them which inconsistent with the words expressly used. If language is clear and explicit, the Court must give effect to it for in that case the words of the statute speak the intention of the legislature and in so doing it must bear in mind that its function is *jus dicere* and not *jus dare*. In other words, the words of the Statutes when there is doubt about their meaning and are to be understood in the sense in which they best harmonise with the subject of the enactment. Their meaning is found not so much in strictly grammatical or etymological propriety language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained. We think that it is necessary to give a literal interpretation to the wide and completely unambiguous words in Section 38-A of the Bombay Act.

17. For the true interpretation of Section 38-A of the Bombay Act, we think the expression "*mutatis mutandis*" as used in Section 38-A assumes importance besides the words "as if". The expression "*mutatis mutandis*" has been explained in case of *Calcutta Corporation* (cited *supra*). The meaning attached to expression "*mutatis mutandis*" is, "when a law directs that a provision made for a certain type of case shall apply *mutatis mutandis* in another type of case, it means that it shall apply with such changes as may be necessary but not that even if no change be necessary, some change shall nevertheless be made....." It is an established principle that the same words or phrases, when used in Acts dealing with the same subject matter often bear the same meaning. So also, where a word has been construed judicially in a certain legal area, it is we think, right to give it the same meaning if it occurs in a statute, dealing with the same general subject matter unless that the word must have a different construction. Those words "*mutatis mutandis*" in decided case cited *supra* are almost identical with Section 38-A and we think that these words should be given the same meaning. It is, therefore, a "fair inference" that "Employee" means the same thing as "workman" in *Workmen's Compensation Act*.

18. It is evident from the words "as if". The words "as if" in Section 38-A are used to equate the position of employees and workmen in that respect of liability of employer for personal injury caused to a workman by accident arising out of and in the course of his employment to pay compensation in accordance with the provisions of the *Workmen's Compensation Act*.

19. It seems to us that is really the only interpretation that can be put on these words, and, when we bear in mind the mischief which this section was intended to remedy and the remedy which it has provided, we think that it should be construed so as to equate the position of an employee as a workman in that respect of recovery of claim for compensation for personal injury caused to the employee by accident arising out of and in the course of his employment from an employer or a principal. The definition of "workman" in the *Workmen's*

Compensation Act has been imported into Section 38-A to provide access to the authority under the Workmen's Compensation Act. It would be very astonishing if employee meant different than workman for purpose of true scope of Section 38-A of the Bombay Act.

20. Shri Gursahani, the learned counsel for the appellant was, therefore, correct in his argument that a legal fiction has been created in the provision contained in Section 38-A to show that employees covered under the Bombay Act are to be treated as the workmen as defined under the Workmen's Compensation Act, 1923 for the purpose of redressal of their grievances for compensation. In this context, it reminds us to refer to the quotation from para 42-A of the report in Bangalore Water Supply and Sewerage Board's case (cited supra) to the following effect :

"..... The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were..... He must set to work in the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature..... A Judge should ask himself the question, how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases".

Their Lordships, further laid down that :

"... The duty of the Court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the Court to travel outside them on a voyage of discovery are strictly limited....."

21. We may, generally observe that it is a well accepted legislative practice to incorporate by reference, if the legislature so chooses, the provisions of some other Act in so far as they are relevant for the purposes of and in furtherance of the scheme and object of that Act. Where certain provisions of an Act are, by means of a legal fiction, deemed to have been imposed under the provisions of another Act, and the structure of that Act is thereby made applicable, what the Courts really have before them is an instance of referential legislation by means of a legal fiction and not of incorporation proper of one statute in another.

22. As we have indicated that u/s 38-A of Bombay Act, the provisions of Workmen's Compensation Act, 1923 and the rules made from time to time thereunder shall "mutatis mutandis" apply to employees of an establishment to which this Act applies, as if they were workmen within the meaning of the Act of 1923. This is a legislative device adopted by the legislature to enact the provisions of Workmen's Compensation act with reference to the employees covered under the Bombay Act, 1948. The definition of "workman" as defined in

the Workmen's Compensation Act does not cover the clerical cadre, but the fiction created u/s 38-A would cover all categories of employees of the respondent-Board except those who are exempted under the Schedule II of the Act.

23. We may further consider the arguments of the learned counsel for the respondent-Board that when the clerical cadre is specifically excluded from the Act of 1923, such clerical cadre under the Bombay Act cannot invoke the benevolent provisions of Workmen's Compensation Act. When the original Act does not contemplate such category, the same cannot be imported by way of legal fiction. However, if this argument is accepted and it is held that only "workman" defined under the Workmen's Compensation Act of 1923 is entitled to compensation for the injuries suffered during the course of employment the entire provision of Section 38-A will become redundant. To accept that argument means to travel beyond the scope of judicial interpretation of statutory words as appearing in the Bombay Act and also to cut down its scope. Ultimately, we have indicated that the expression "mutatis mutandis" would mean application with modification. The employees under the Bombay Act shall have to be construed as workmen and that they shall be entitled to benefits of the provisions relating to compensation for the legal injury and any other approach would defeat the benevolent aspect of the Bombay Act. If the employees of the establishments are held not entitled to compensation under the Workmen's Compensation Act, 1923, the important aspect of benefit of compensation shall have been denied which is not permissible in view of what we have expressed hereinabove. It does not appear that the legislation intended to confer in addition any other remedy on such persons and this is evident that, so far as that section is concerned, it is inserted in the Bombay Act for the benefit of a particular class of persons and with a view to make an action for damages enforceable under the provisions of the Workmen's Compensation Act, 1923. The words "as if" will have, therefore, to be interpreted in its limited scope. It is accepted principle that statutes dealing with procedure should, when possible be limited in their construction to procedure only. Hence, we reiterate that the present appellant, who belongs to the clerical cadre of the Board is entitled to maintain an application under the Workmen's Compensation Act, 1923 for compensation.

24. It is, therefore, not necessary for an employee of an establishment to which the Bombay Shops and Establishments Act, 1948 applies to prove that he is a "workman" within the meaning of Workmen's Compensation Act, 1923, because section 38-A itself contains a deeming provision. In the given case, therefore, the view taken by the authority below is not legally correct. The authority below has fallen into a legal error in taking into account the definition of the "workman" as contained in Section 2(1)(n) of the Workmen's Compensation Act, 1948, in isolation and in disregard to the provision contained in Section 38-A of the Bombay Shops and Establishments Act, 1948.

25. Shri Joshi, the learned Counsel for the respondent invited our attention to

the case of Debi Mata Vs. State of West Bengal and Others, , wherein also phrase "mutatis mutandis" has been explained. It has been observed that, phrase, "mutatis mutandis" is often used in legislation in applying or extending legislative provisions to same or similar circumstances or to same or similar subjects. It is nothing but a rule of adaptation. By providing for application of a certain law or its provision, "mutatis mutandis" the legislature neither abdicates not delegates its legislative power. Thus, the application for compensation filed by the appellant before the authority below was quite legally maintainable in law.

26. Shri Joshi, learned counsel appearing for the respondent, however, urged that the appeal lies before the single Judge bench as, according to him, the original claim for compensation is less than Rs. 50,000/- On the other hand, Shri Gursahani, learned counsel for the appellant urged that besides original claim of Rs. 40,000/- the appellant has also claimed and quantified penalty amounting to Rs. 20,385/- and, therefore, the claim for compensation in the original application exceeds more than Rs. 50,000/- and the appeal would, therefore, lie before the Division Bench. It is true that in case of the appeals lie to the High Court as from original decrees, whether under the CPC or under any local or special Act, wherein the value of the subject matter in dispute in the Court of before the Tribunal of the first instance does not exceed fifty thousand rupees and wherein the value of the subject matter still in dispute on appeal is fifty thousand rupees or less, the appeal lies before the single bench as per paragraph 2 of Chapter 1 of Bombay High Court, Appellate Side Rules, 1960. In the instant case, as stated above, the original claim exceeds Rs. 50,000/- and, therefore appeal lies before the Division Bench. We therefore, do not find any force in the objection raised by the learned counsel, Shri Joshi, for the respondent.

27. Coming to the merits of the claim of the appellant, it may be stated that the learned Commissioner for Workmen's Compensation on the evidence adduced by the appellant found that the appellant had sustained personal injury which has arisen out of and in the course of his employment with the respondent. The respondent was given opportunity to adduce evidence in that behalf but no evidence was adduced and the matter has been decided on merits as per issue No. 1 in the application. We, therefore, find that in absence of contrary evidence, the finding on issue No. 1 requires no interference and the same is accordingly confirmed.

28. The learned Commissioner for Workmen's Compensation, however, in the view that he has taken, did not consider the quantum of compensation. It is therefore, necessary that to decide issue No. 2 in regard to the quantum of compensation, it is expedient in the interest of justice to remand that issue to the Commissioner for Workmen's Compensation with a direction to dispose of the application by deciding that issue as expeditiously as possible and preferably within three months.

29. In the result, the appeal is allowed. The order dated 15-2-1992, passed by the Commissioner for Workmen's Compensation by returning the application for

compensation to the appellant for presentation before the appropriate authority is hereby set aside. In the view that we take the matter is remanded to the Commissioner for Workmen's Compensation to decide issue No. 2 as regards quantum of compensation and to pass appropriate order in the matter. There shall, however, be no order as to costs. We direct the Commissioner for Compensation to dispose of the application for deciding that issue within a period of three months from the receipts of record and proceedings. Record and proceedings be sent forthwith.

30. Appeal allowed.