Union Of India And Another vs G.M. Kokil And Others on 21 March, 1984

Equivalent citations: 1984 AIR 1022, 1984 SCR (3) 292, AIR 1984 SUPREME COURT 1022, 1984 LAB. I. C. 663, 1984 UJ (SC) 534, 1984 ICR 211, 1984 SCC (L&S) 631, (1984) 2 LABLJ 20, (1984) 2 LAB LN 240, (1984) 1 SCWR 341, (1984) 65 FJR 1, (1984) 48 FACLR 405, (1984) 1 SERVLJ 675

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Bench: V.D. Tulzapurkar, R.S. Pathak

PETITIONER:
UNION OF INDIA AND ANOTHER

Vs.

RESPONDENT:
G.M. KOKIL AND OTHERS

DATE OF JUDGMENT21/03/1984

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
PATHAK, R.S.

CITATION:
1984 AIR 1022 1984 SCR (3) 292
1984 SCALE (1)521
CITATOR INFO :
D 1990 SC1382 (7)
RF 1992 SC 81 (11)

ACT:
Factories Act, 1948-s.59-Benefit of overtime wages at double the rate of ordinary wages-Scope of Section 70 of Bombay Shops and Establishments Act, 1948 extends the benefit under s. 59 of Factories Act to all persons employed in factory irrespective of the fact whether they are workers under s. 2(1) of the factories Act or not and whether they are exempted under s. 64 of Factories Act read with rule 100 made by State Government.
Bombay Shops & Establishments Act . 1948S- 70-Interpretation of.

HEADNOTE:

The respondents who were working in different capacities in the factory of India Security Press at Nasik, an establishment of the appellant, filed an application before the Central Government Labour Court, Bombay under s. 33 C(2) of the Industrial Disputes Act, 1947 claiming overtime wages at double the ordinary rate of wages under s. 59 of the Factories Act read with s. 70 of the Bombay Shops and Establishments Act, 1948. The Labour Court dismissed the contentions of the appellant and granted relief. Hence this appeal.

Dismissing the Appeal

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HELD: The contention that the respondents were not workers within the meaning of s. 2(1) of the Factories Act and therefore not entitled to the benefit of s. 59 of that Act read with s. 70 of the Bombay Shops and Establishments Act 1948 must fail on the plain language of s. 70. The main provision of s. 70 which is relevant consists of two parts; the first part states that if there be a factory the Shops and Establishment Act will not apply and the second part states that to such a factory 'the provisions of the Factories Act shall, notwithstanding anything contained in that Act, apply to all persons employed in or in connection with the factory". Clearly, the underlined portion (the non-obstante clause and the phrase 'all persons employed') has the effect of enlarging the scope of Factories Act by making it applicable to all persons employed in such factory irrespective of whether employed as workers or otherwise. Therefore although the respondents have not been 'workers' within the meaning of s. 2(1) they will get the benefit of s. 59. [298 C-F]

B.P. Hira, Works Manager, Central Railway, Parel, Bombay, etc. v. C.M. Pradhan etc [1960] S.C.R. 137 referred to.

The contention that by reason of rule 100 made by the State Govern-

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ment under s. 64 of the Factories Act the benefit under s. 59 was not available to the respondents falling within the exempted category by reason of their holding posts of supervision, has no force. [300F and 295E]

It is well-known that a non-obstante clause is a legislative device which is usually employed to give over-riding effect to certain provision over some contrary provision that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. Thus the non-obstante clause in s. 70, namely, "notwithstanding anything to the contrary contained in that Act and as such it must refer to the exempting provisions which would be contrary to the general applicability of the Act. Just as because of the

non-obstante clause the Act is applicable even to employees in the factory who might not be workers' under s. 2(1), the same non-obstante clause will keep away the applicability of exemption provisions quarrel those working in the factory The Labour Court was therefore right in taking the view that because of the non-obstante clause s 64 read with Rule 100 itself would not apply to the respondents and they would be entitled to claim overtime wages under s. 59 of that Act read with s. 70 of the Bombay Shops and Establishments Act, 1948. [300 C-G]

The contention that the respondents were not workmen under the Industrial Disputes Act and as such their application was not maintainable, must be rejected. The contention depends upon the appreciation of evidence led by the parties on the nature of duties and functions performed by the concerned respondents and it was on an appreciation of the entire material that the Labour Court recorded a finding that having regard to the nature of their duties and functions all respondents, other than those who were holding the posts of Senior Supervisors and supervisors, were industrial employees, i. e. workman under the Industrial Disputes Act and it is not possible for this Court to interfere with such a finding of fact recorded by the Labour Court. Even otherwise after considering some of the important material on record the court is satisfied that the Labour. Court's finding is correct. [301 C-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2736 of 1972.

From the Award dated the 31st December, 1971 of the Central Govt Labour Court Bombay in application no. L.C.B.- 326 of 1969.

Harbans Lal, N. S. Das Bahl and R. N. Poddar for the appellants.

V. M. Tarkunde, K. Shivraj Choudhary and K. R. Choudhary for the respondents.

The Judgment of the Court was delivered by TULZAPURKAR, J. The only point raised by counsel for the Appellants in this appeal is whether the respondents who are employees working in the Factory of India Security Press, Nasik are entitled to over-time wages at twice the normal rate of their wages under s. 59 of the Factories Act 1948 read with s. 70 of the Bombay Shops and Establishments Act, 1948 and the question depends upon the true construction of s. 70 of the latter Act. Since in our view the question of proper construction of the said s. 70 is concluded by a decision of this Court in Shri B.P. Hira, Works Manager, Central Railway, Parel, Bombay, etc. v. Shri C.M. Pradhan etc.(1) it is unnecessary to indulge in any elaborate statement of facts or discussion of all the rival contentions that were urged before the Central Government Labour Court Bombay, whose

decision rendered on December 31, 1971 is challenged in this appeal.

Briefly stated the admitted facts are: The India Security Press, Nasik is a very big establishment of the Central Government headed by the General Manager, who is also known as Master, India Security Press. Apart from administrative offices it has a factory. The Press has four wings, namely, (a) the stamp press, (b) currency note press,

(c) new currency note press and (d) central stamp stores. There are various categories of workers who have been classified into two groups such as (1) employees working in the administrative offices and (2) those working in the factory. The 78 respondents, belonging to all the four wings, have been employees working in the factory (of these, R-1 to R-3 are Chief Inspectors (Control); R-4 to R-36 are Inspectors (Control); R-37 & R-38 are Senior Supervisors; R- 39 to R-52 are Supervisors; R-53 to R-77 are Junior Supervisors and R-78 is a Store Keeper). These 78 Respondents filed an application against the Appellants before the Central Government Labour Court, Bombay under s. 33C (2) of the Industrial Disputes Act, 1947 claiming over- time wages under s. 59 of the Factories Act. read with s. 70 of the Bombay Shops and Establishments Act. Their case was that though the normal working period for all those who were working under the roof of the factory was 44 hrs. per week, they were, along with the regular factory workers, required to work for more than 44 hrs. a week but the management had been causing loss to them by paying them, unlike the factory-workers, over-time wages at the basic rates even for work done beyond 44 hrs. whereas they were entitled to over- time wages at double the rate of their normal wages (inclusive of dearness allowance, etc.), and as such they were entitled to get the amount of difference ascertained, computed and paid to them; and they claimed this relief in respect of overtime work done during the past 12 years i.e. from 1-1-1956 to 30- 8-1968. Along with the application they gave a detailed schedule and the particulars of their claim totalling to an amount of Rs. 7,00,000 and odd.

This claim was resisted by the Appellants on several grounds but we need mention only those grounds which have a bearing on the only point that was raised and argued before us by counsel for the appellants. Inter alia it was contended that none of the Respondents was a 'worker' under s. 2 (i) of the Factories Act and as such they were not entitled to the benefit of s. 59 of that Act read with s. 70 of the Bombay Shops and Establishments Act, 1948. It was further contended that even assuming that the respondents were entitled to claim the benefit of the s. 59 read with the s. 70 notwithstanding that none of them was a worker, by reason of Rule 100 made by the State Government in exercise of its powers under s. 64 of the Factories Act, s. 59 became inapplicable to the Respondents and therefore could not be availed of by them inasmuch as quite a substantial number of them fell within the category of person who had been "defined or declared to be holding positions of supervision or management or being employed in a confidential position in the factory." In other words. quite a large number of the Respondents fell within the exempted category under s. 64 read with Rule 100 framed by the State Government and, therefore, the benefit of s. 59 was not available to them. It was further urged that none of the Respondents was an industrial employee, i.e. 'a workman' within the meaning of s. 2 (s) of the Industrial Disputes Act and as such their application under s. 33C (2) of that Act was not maintainable.

The Central Government Labour Court, Bombay negatived the first two contentions in view of the decision of this Court in the case of B.P. Hira v. C.M. Pradhan (supra) and as regards the third contention on an appreciation of the oral and documentary evidence led by the parties, it came to the conclusion that all respondents holding the posts of Chief Inspectors (Control) (R-1 to R-3), Inspectors (Control) (R-4 to R-36), Junior Supervisors (R-53 to R-57) and Store Keeper (R-78) having regard to the nature of duties and functions performed by them were industrial employees i e. workmen under the Industrial Disputes Act, 1947 and as such were entitled to the relief claimed by them but as regards the respondents who were holding the posts of Senior Supervisors (R-37 and R-38) and Supervisors (R-39 to R-5) not being workmen under the Industrial Disputes Act were not entitled to the relief claimed, of course, they were denied the relief only for the period during which they were holding those posts. This decision is challenged in the appeal.

As stated earlier, the validity or otherwise of the first two contentions that were urged before the Labour Court and reiterated before us by Counsel for the appellants depends upon the proper construction of s.70 of the Bombay Shops and Establishments Act, 1948 and in order to appreciate both the contentions it will be necessary to set out s. 59, s. 64 together with Rule 100 of the Factories Act and s. 70 of the Bombay Shops and Establishments Act, 1918 Sections 59 and 64 occur in Chapter VI of the Factories Act, 1948 and the material portions thereof run thus:

> "59. Extra Wages for overtime.-(1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work be entitled to wages at the rate of twice his ordinary rate of wages."
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> "64. Power to make exempting rules, (1) The State Government may make rules defining the persons who hold positions of supervisions or management or are employed in a confidential position in a factory, or empowering the Chief Inspector to declare any person, other than a person defined by such rules, as a person holding position of supervision or management or employed in a confidential position in a factory if, in the opinion of the Chief Inspector, such person holds such position or is so employed and the provisions of this Chapter, other than provisions of clause (b) of sub-section (1) of section 66 and of the proviso to that sub-section, shall not apply to any person so defined or declared:
>
> Provided that any person so defined or declared shall, where the ordinary rate of wages of such person does not exceed rupees seven hundred and fifty per month, be entitled to extra wages in respect of overtime work under section 59."

Rule 100 framed under s. 64 runs thus:

> "Persons defined to hold positions of supervision or management or confidential position. The following persons shall be deemed to hold position of supervision or management or to be employed in a confidential position in a factory-

(a) All persons specified in the Schedule annexed hereto.

(b) Any other person who, in the opinion of the Chief Inspector, holds a position of supervision or management or is employed in a confidential position.

Schedule List of persons defined to hold positions of supervision or management in factories:-

Manager Assistant Manager .....

.....

Departmental Heads and Assistants .....

Head Store Keepers and Assistants Technical Experts."

Section 70 of the Bombay Shops and Establishments Act, 1948 runs thus:

"70. Persons employed in factory to be governed by Factories Act and not by this Act.

Nothing in this Act shall be deemed to apply to a factory and the provisions of the Factories Act, 1948 shall, notwithstanding anything contained in that Act, apply to all persons employed in and in connection with a factory:

Provided that, where any shop or commercial establish-

ment situate within the precincts of a factory is not connected with the manufacturing process of the factory the provisions of this Act shall apply to it: Provided further that, the State Government may, by notification in the official Gazette, apply all or any of the provisions of the Factories Act, 1948 to any shop or commercial establishment situate within the precincts of a factory and on the application of that Act to such shop or commercial establishment, the provisions of this Act shall cease to apply to it."

Counsel for the appellants urged that the respondents, though employed in the factory of the Press, were not 'workers' within the meaning of s. 2 (1) of the Factories Act and therefore were not entitled to the benefit of s. 59 of that Act read with s. 70 of the Bombay Shops and Establishments Act, 1948. On the plain language of sec. 70 of the Bombay Shops and Establishments Act this contention has to fail. We are concerned not with either of the provisos but with the main provision of s. 70 which consists of two parts; the first part states that if there be a factory the Shops and Establishments Act will not apply and the second part states that to such a factory "the provisions of the Factories Act shall, notwithstanding anything contained in that Act, apply to all persons employed in or in connection with a factory." Clearly, the portion underlined (the non-obstante clause and the phrase 'all persons employed') has the effect of enlarging the scope of Factories Act by making it applicable to all persons employed in such factory irrespective of whether employed as workers or otherwise.

Therefore although the respondents have not been 'workers' within the meaning of sec. 2 (1) they will get the benefit of sec. 59.

This identical question arose for consideration before this Court in the case of B.P. Hira v. C.M. Pradhan (supra). In that case Shri C.M. Pradhan and other respondents were employed as time-keepers in the time office of the Central Railway Workshop and Factory, Parel, Bombay and they had claimed over-time wages under s.59 of the Factories Act first on the basis that they were 'workers' within the meaning of s 2(1) of that Act and alternatively on the basis that assuming they were not 'workers' within the meaning of s. 2(1) of that Act, they were entitled to claim overtime wages under s.59 of the Factories Act read with s.70 of the Bombay Shops and Establishments Act, 1948. The validity of the claim on both the grounds was disputed by the appellant (Works Manager). The Authority under the Payment of Wages Act found that only four of the respondents, who were required to do the work of progress time-keeper, could claim the status of 'workers' within the meaning of s. 2(1) of the Factories Act and the rest were merely employees of the workshop, but accepted the alternative case 'made by the respondents and held that each of the respondents was entitled to get the over-time wages under sec. 59 read with sec. 70 and this Court upheld the view of the Authority and confirmed its decision. The Court's view on the proper construction of s. 70 of the Bombay Shops and Establishments Act 1948 has been succinctly summarized in the second head note, which appears at page 137 of the report, which runs thus:

> "On a proper construction of s. 70 of the Act it is clear that the first part of the section excludes a factory and its employees from the operation of the Act; but the second part makes the relevant provisions of the Factories Act applicable to them. The non-obstante clause in the section shows that the employees in a factory, although they might not be workers within the meaning of s. 2(1) of the Factories Act, are entitled to claim overtime wages as provided for by that Act."

Apart from the fact that the decision is binding on us, we are in respectful agreement with the construction placed by it on s. 70 of the Act. The first contention has, therefore, to be rejected.

Counsel for the appellants next urged that the effect of s. 70 as indicated by the aforesaid decision is that it makes the provisions of the Factories Act applicable to all persons (irrespective of their capacity) employed in a factory but the provisions of the Act include s. 64 (occurring in the same Chapter VI) which gives power to the State Government to make exemptions and it is under s. 64 that Rule 100 has been framed by the State Govt. under which the employees specified in the Schedule to the Rule have been excluded from the purview of s. 59 of that Act and since in the instant case a substantial number of the respondents fall within the exempted category (Departmental Heads and Assistants) and Head Storekeepers and Assistant they would not be able to claim overtime wages under s. 59 of that Act read with s. 70 of the Bombay Shops and Establishments Act. In other words, counsel contended that s. 59 must, be read with s. 64 of the Factories Act and because of Rule 100 framed under s. 64, s. 59 becomes inapplicable to the respondents falling within the exempted categories On the other hand, counsel for the respondents urged that the non-obstante clause has the effect of keeping out of the way the exemption provisions, namely, s. 64 read with Rule 100 and according to him such effect must follow from the

ratio of this Court's decision in case of B.P. Hira v. C.M. Pradhan (supra) and the Labour Court had rightly taken the view that because of the non-obstante clause the respondents' right to claim benefit of overtime wages under s 59 read with s. 70 was not affected by the framing of rule 100 by the State Government in exercise of the power conferred on it under s.

64. Section 70, so far as is relevant, says "the provisions of the Factories Act shall, notwithstanding anything contained in that Act, apply to all persons employed in and in connection with a factory". It is well-known that a non- obstnte clause is a legislative device which is usually employed to give over-riding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. Thus the non-obstante clause in s. 70, namely, "notwithstanding anything in that Act" must mean notwithstanding anything to the contrary contained in that Act and as such it must refer to the exempting provisions which would be contrary to the general applicability of the Act. In other words, as all the relevant provisions of the Act are made applicable to a factory notwithstanding anything to the contrary contained in it, it must have the effect of excluding the operation of the exemption provisions. Just as because of the non-obstante clause the Act is applicable even to employees in the factory who might not be 'workers' under sec. 2(1), the same non-obstante clause will keep away the applicability of exemption provisions qua all those working in the factory. The Labour Court, in our view, was, therefore, right in taking the view that because of the non-obstante clause s. 64 read with Rule 100 itself would not apply to the respondents and they would be entitled to claim overtime wages under s. 59 of that Act read with s. 70 of the Bombay Shops and Establishments Act, 1948.

Counsel for the appellants pointed out that if such construction was placed on s. 70 it will lead to an anomalous situation that even employees of a factory occupying positions of a Manager or a General Manager would become entitled to overtime wages which could not have been the intention of the State Legislature, but that, in our view, is a matter of the State Legislature and not for the Court but it must be pointed out that since the rendering of the aforesaid decision by this Court in 1960 the State Legislature has not intervened, which perhaps suggests that the State Legislature is not keen to limit the operation of the non-obstante clause in any manner. The second contention must also fail.

Counsel for the appellants made a feeble attempt to contend that not merely such of the respondents who were holding the posts of Senior Supervisors and Supervisors were not industrial employees but all the other respondents were also not industrial employees i.e. were not workmen under the Industrial Disputes Act. In the first place, the contention depends upon the appreciation of evidence led by the parties on the nature of duties and functions performed by the concerned respondents and it was on an appreciation the entire material that the Labour Court recorded a finding that having regard to the nature of their duties and functions all respondents, other than those who were holding the post of Senior Supervisors and Supervisors, were industrial employees, i.e. workmen under the Industrial Disputes Act and it is not possible for this Court to interfere with such a finding of fact recorded by the Labour Court. Even otherwise after considering some of the important material on record through which we were taken by counsel for the appellants, we are satisfied that the Labour Court's finding is correct.

In the result the appeal fails and is dismissed but there will be no order as to costs.

H.S.K. Appeal dismissed.