Supreme Court of India
The Ballarpur Collieries Co vs State Industrial Court, Nagpur ... on 15 November, 1965
Equivalent citations: 1966 AIR 925, 1966 SCR (2) 589
Author: K Wanchoo
Bench: Wanchoo, K.N.

PETITIONER:
THE BALLARPUR COLLIERIES CO.

Vs.

RESPONDENT:
STATE INDUSTRIAL COURT, NAGPUR AND OTHERS

DATE OF JUDGMENT:
15/11/1965

BENCH:
WANCHOO, K.N.
BENCH:
WANCHOO, K.N.
GAJENDRAGADKAR, P.B. (CJ)
RAMASWAMI, V.
SATYANARAYANARAJU, P.

CITATION:
1966 AIR 925 1966 SCR (2) 589

ACT:
Central Provinces and Berar Industrial Disputes Settlement Act. No. 23 of 1947, s. 1(3), Notification under-Certain industries exempted from operation of provisions of the Act-Head Office of mining company whether exempted.

HEADNOTE:
The appellant was a mining company with its head office at Nagpur. The business of the head office was to look after the sale of coal extracted from the collieries. An employee of the company working in the head office made applications under s. 16 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, to the Assistant Commissioner of Labour, Nagpur. The company objected that by virtue of the notification under s. 1(3) of the Act the mining industry had been exempted from the operation of the Act including s. 16 and therefore the Assistant Labour Commissioner had no jurisdiction. The authorities under the Act as well as the High Court under Arts. 226 and 227, rejected the company's contention. The High Court took the view that what was exempted by the third item in the notification was not the head office of a mine but the mine

itself and consequently the employees of the head office were governed by the Act. The company appealed to the Supreme Court by special leave.

HELD : The notification in question said that the Act would come into force on 21st November, 1947 "in all the industries except the following" and then went on to name four industries the third one being 'Mines'. After the word 'following' the, word industries must be read and thus read the notification in effect said the Act would come into effect on the given date in all industries except the industries mentioned. Therefore it was not only mines but the mining industry itself that was exempted from the operation of the Act. [593 A-B, D E]

If the notification exempted the industry of mines or the mining industry it could not be said that it merely exempted that part of the said industry of mines or mining industry which consisted of raising coat at the colliery and did not include the head office thereof. As the High Court said, the head office was part of the integrated activity of the company. Therefore when the mining industry was exempted from the operation of the Act the exemption applied not only to that part of the industry which consisted of raising coal at the colliery but also to that part of it which consisted in the sale of coal and its supply to the customers and would thus include the head office also. [593 E-G]

M/s. Godavari Sugar Mills Ltd. v. D. K. Worlikar, A.I.R. 1960 S.C. 842 and M/s. Serajuddin and Co. v. Their Workmen , [1962] 3. Supp. S.C.R. 934, distinguished.

On the above view the Assistant Labour Commissioner had no jurisdiction under the Act to deal with the matter in question. [595 E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 30 of 1965. 5 9 0 Appeal by special leave from the judgment and order dated September 8, 1962 of the Bombay High Court in Special Civil Application No. 364 of 1961.

C. B. Agarwala, 0. P. Malhotra, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the appellant. G. L. Sangli and A. G. Ratnaparkhi, for respondent No. 3. The Judgment of the Court was delivered by Wanchoo, J. The only question raised in this appeal by special. leave is whether the Central Provinces and Berar Industrial Disputes Settlement Act, No. XXIII of 1947, (hereinafter referred to as the Act) is applicable to the head office of the appellant which is known as the Ballarpur Collieries Company. The head office is situate in Nagpur and has a staff of about 35 employees. The business of the head office is to look after the sale of coal extracted from the collieries.

The question arises in this way. Bapat respondent was a stenographer working in the head office at Nagpur. He was dismissed from service on July 31, 1959. It is not necessary for present purposes to go into the facts and circumstances leading to this dismissal. Suffice it to mention that an enquiry was said to have been held before the dismissal order was passed. While this enquiry was pending Bapat made an application under S. 16 of the Act before the Assistant Commissioner of Labour, Nagpur, on July 21, 1959. In this application Bapat prayed that the employer should be ordered to pay him wages from the date of dismissal, discharge or removal to the date of the order under s. 16 in addition to a sum not exceeding Rs. 2,500 by way of compensation. It was also prayed that the employer should be ordered to pay retrenchment compensation under Chap. V-A of the Industrial Disputes Act, No. 14 of 1947 (hereinafter referred to as the Central Act No. 14). Though this application was headed as application for reinstatement and compensation etc., there was no prayer for reinstatement and Bapat was only content to ask for a sum of Rs. 2,500 by way of compensation. While this application was pending, Bapat was, as already indicated, dismissed on July 31, 1959. Thereupon he filed another application under S. 16 of the Act on August 19, 1959. In this application he prayed for reinstatement or in the alternative for full com- pensation amounting to Rs. 2,500 and such other relief as he might be entitled to.

The main contention of the appellant before the Assistant Commissioner of Labour was that the Act did not apply to it and therefore the Assistant Commissioner had no jurisdiction to proceed in the matter. The Assistant Commissioner held that the Act applied and he had jurisdiction to deal with the matter. He therefore gave relief by setting aside the order of dismissal and directing that the employer should pay Rs. 2,000 as compensation and wages from the date of dismissal to the date of his order.

This order was taken in revision by the appellant to the State Industrial Court at Nagpur, and the main contention again urged there was that the Act did not apply to the appellant and the Assistant Commissioner had no jurisdiction to deal with the matter. This contention did not find favour with the State Industrial Court with the result that the revision was dismissed.

The appellant then filed a petition under Articles 226 and 227 of the Constitution in the High Court, and the same contention was raised that the Act did not apply and the Assistant Commissioner had no jurisdiction in the matter. The High Court held on a construction of the relevant provisions of the Act and the notification issued thereunder that the Act was applicable and in consequence the writ petition was dismissed. The High Court having refused to give leave to appeal to this Court, the appellant obtained special leave from this Court; and that is how the matter has come before us.

Section 1 of the Act came into force on June 2, 1947, andas provided by S. 1(3) thereof, the rest of the Act came into force on November 21, 1947, on a notification being issued by the State Government in that behalf. Section 1(3) lays down that "the State Government may by notification bring the remaining sections or any of them into force in such area or industry and on such date as may be specified in the notification." By virtue of the power conferred on the State Government by S. 1(3) the following notification was issued on November 2, "In exercise of the powers conferred by sub-

section (3)of section 1, of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947, the Provincial Government are pleased to direct that sections 2 to 61 of the said Act shall come into force on the 21st November 1947, in all the industries except the following namely :-

(i) Textile industry.

(ii) Employment in any industry carried on by or under the authority of the Central Government by an Indian State Railway or by a Railway Company operating an Indian State Railway.

(iii) Mines.

(iv) Saw Mills."

It is the interpretation of this notification which calls for consideration in the present appeal. The appellant's contention is that by this notification, the Act was applied as from November 21, 1947, to all industries except four specified therein; and of these, the third was mines. It is urged on behalf of the appellant that when the notification provided for the application of the Act to .all industries except four which were excepted it was exempting the mining industry by the third item of exemption. The nlining industry according to the appellant will include the head office, for as the High Court says, "it is not disputed that the Head Office is a part of integrated activity of the petitioner-company which carries on the business of producing coal and its sale and supply to its various customers." The argument is that the head office at Nagpur being a part of integrated activity of carrying on the mining industry by the appellant, the head office was equally exempt from the application of the Act by the notification in question. If that is so, no application under S. 16 of the Act could be made by Bapat to the Assistant Commissioner of Labour. It is also pointed out on behalf of the appellant that Bapat would have a remedy under the Central Act No. 14 of 1947 which came into force earlier than the Act from April 1, 1947, though the procedure for obtaining relief under that Act would be different namely, through- a reference by the appropriate Government under s. 10 of the Central Act No. 14 of 1947.

The High Court however held that what was exempted by the third item in the notification was not the head office of a mine but the mine itself and no more.. Consequently the employees at the head office of the appellant were governed by the Act. This view of the High Court is being supported by the respondents before us, and it is urged that the notification uses the word " mines" and not the words "mining industry" in the exemption part and therefore what was exempted from the Act were merely -the coal mines where mining operations were carried on and not the mining industry, which may include the head office also. We are of the opinion that the contention raised on behalf of the appellant is correct, and what the notification exempted was the mining industry from the operation of the Act. In this %connection we may refer to the following words in the notification 5 93 namely, "the said Act shall come into force on the 21st November, 1947 in a11 the industries except the following". Grammatically the word "industries" must be understood as following the word"following" appearing in the above sentence. Thus what the notification in effect said was that the said Act shall come into force on 21st November 1947 in all the industries except the following, industries. It has however, been urged that if that was so, it was not necessary, for example, in the

first item of examption to use the words "textile industry", and it would have been sufficient to use the word "textile". All that we need say is that the notification is not a work of art and has to be read in its tenor without trying to find out why the word "industry" was used in the first item and why the same was not used in the third and fourth items, which deal with "Mines" and "Saw Mills" respectively. Grammatically, however, this part of the notification clearly says that the Act would apply to all industries except the four industries specified therein for the purpose of exemption. These four exemptions include the industry of mines. We see no difference between the words "mining industry" and "industry of mines", for they mean the same thing, namely, the industry which is concerned with mines. If therefore the notification exempted the industry of mines or the mining industry it cannot be said that it merely exempted that part of the said industry of mines or mining industry which consisted of raising coal at the colliery and did not include the head office thereof. As we have already indicated, the High Court has said that "it is not disputed that the head office is a part of integrated activity of the petitioner company which carries on the business of producing coal and its sale and supply to its various customers". Therefore, when the industry of mines or the mining industry was exempted from the operation of the Act, the exemption applied not only to that part of the industry which consisted of raising coal at the colliery but also to that part of it which consisted in the sale of coal and its supply to customers and would thus include the head office also. As we read the notification we see no escape from the conclusion that what was exempted from the application of the Act was the industry of mines or the mining industry and that would include not only the colliery where the coal was raised but also the head office from where the coal was sold 'and distributed to the customers.

It now remains to refer to two cases on which reliance was placed by the High Court. The first is Messrs. Godavari Sugar Mills Ltd. v. D. K. Worlikar(1). In that case this Court held (1) [1960] 3 S.C.R. 305.

5 9 4 that the notification under challenge there did not apply to the head office of the Sugar Mills. That decision turned on the actual words of the notification and is of no assistance to the respondents. It was pointed out in that case that if the notification had merely used the words "sugar industry" it would have been possible to construe that expression in a broader sense having regard to the wide definition of the word "industry"; but the notification had deliberately adopted a different phraseology and had brought within its purview not the sugar industry as such but the manufacture of sugar and its by-products. The words of the notification in that case were "the said Act shall apply to the following industry, namely, the manufacture of sugar and its by- products". Therefore on the words of the notification in that case, the wide implication which might have arisen if the notification had merely stated that the Act applied to the sugar industry was cut down by the specific words in the notification, namely, manufacture of sugar and its by- products, which would clearly apply only to a part of sugar industry which dealt with the manufacture of sugar and the by-products and would not apply to the head office which did not deal with the actual manufacture but dealt with the consequent steps following on the manufacture viz., sale and distribution to customers. In the present case the notification clearly applied to the industry of mines which in our opinion is nothing different from mining industry and must therefore take in the entire industry including the raising of coal from the colliery as .well as its distribution, sale and supply to the customers. That case therefore is of no help to the respondents. The next case to which reference is

made is Messrs. Serajuddin and Company v. Their workmen(1). In that case a dispute relating to the head office of a mining company was referred by the Government of West Bengal to the industrial tribunal and a question arose whether the Government of West Bengal was the appropriate government within the meaning of S. 2 (a) (i) of the Central Act No. 14 of 1947. It was held that the West Bengal Government was the appropriate government and the decision turned on the interpretation of S. 2 (a) (i) of the said Act which defined "appropriate government". The words which came in for interpretation were "in relation to an industrial dispute concerning a banking or an insurance company, a mine, an oil-field, or a major port". It was held that the word "mine" as used in s. 2 (a) (i) of the Central Act No. 14 of 1947 referred to a mine as defined in the Mines Act and that a dispute with reference to the head office of a mine was not a dispute concerning the mine which (1) [1962] 3 Supp. S.C.R. 934.

5 9 5 must mean a mine as defined in the Mines Act. That case also is of no help to the respondents for here we are not concerned with the word "mine'; what we are concerned with is whether the exemption clause in the notification which exempts the industry of mines or the mining industry will take in the head office. The words therefore in the present notification are different and the decision in that case is of no help. We have no doubt that when the notification exempts the industry of mines or the mining industry which in our opinion mean the same thing, the exemption includes the he-ad office also which must be treated as an integral part of the mining industry, for it deals with the subse- quent steps taken to dispose of, in this case, the coal raised from the colliery.

Learned counsel for the appellant wished to argue that the head office carried on other activities besides the activity of selling coal raised from the colliery. We have not allowed him to raise this point for this was not raised in the High Court. We have already referred to the observation of the High Court that it was not disputed that the head office was a part of integrated activity of the appellant- company which carried on the business of producing coal and its sale and supply to its various customers. It was not even the case of the respondents in reply in the High Court that the head office carried on other activities besides the sale and distribution of the coal produced in the colliery. In the view we have taken of the notification and its interpretation we are of opinion that the Assistant Commissioner of Labour had no jurisdiction under the Act to deal with the application of Bapat. In this view of the matter the appeal must be allowed and the orders of the High Court, the State Industrial Court and the Assistant Commissioner of Labour are set aside. We therefore direct the dismissal of the application under S. 16 of the Act. In the circumstances we pass no order as to costs. Appeal allowed.