

Manager of Kargali Colliery Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jun-28-2000

Judge : Aftab Alam, J.

Acts : Standards of Weights and Measures (Enforcement) Act, 1985 - Sections 2 and 24

Appeal No. : C.W.J.C. No. 6242 of 1988

Appellant : Manager of Kargali Colliery

Respondent : The State of Bihar and ors.

Advocate for Def. : J.D. Singh, GP-I and Meena Singh, JC to GP-I

Advocate for Pet/Ap. : K.D. Chatterjee, Sr. Adv., V.M.K. Sinha and A.K. Verma

Judgement :

Aftab Alam, J.

1. Does the provision of Section 24 of the Standards of Weights & Measures (Enforcement) Act, 1985 (hereinafter referred to as 'the Enforcement Act') extend to the petrol/H.S.D. pump, with underground tank and fittings, installed at a colliery under the consumer petrol/H.S.D. Hire & Supply Agreement with the Oil Corporation and whether the colliery is obliged under the law to have the petrol/H.S.D. pump installed on its premises duly verified and stamped even

though the entire supply of petrol/H.S.D. is consumed by the colliery internally and no amount of petrol/ H.S.D. is sold by it to any third party These are the questions that arise for consideration in this case.

2. This writ petition is filed by the Manager of Kargali Colliery which is a unit of M/s Central Coal Fields Limited. The coal mining operation requires the use of different types of vehicles and machines all of which run on petrol or high speed diesel e.g. dumpers, bulldozers, heavy earth movers, pump etc. The colliery management, therefore, requires large supply of petrol and high speed diesel. In order to meet its requirement of petrol and H.S.D. the petitioner company entered into an agreement with the Indian Oil corporation. The agreement called 'the Consumer Petrol/ High Speed Diesel Pump Hire & Supply Agreement' obliged the petitioner company to take all its supplies of petrol / H.S.D. from no one else but the Indian Oil Corporation. In turn the corporation agreed to have a petrol pump with underground tanks and fittings installed on the colliery premises for proper storage of petrol /H.S.D. supplied by the corporation in bulk, It will be required later in this judgment to examine the relevant clauses of the agreement. Suffice it to note here that the supply of the petrol/H.S.D. by the Corporation to the petrol pump installed under the agreement was meant entirely for the internal consumption by the colliery and the Colliery was further bound not to supply any petrol /H.S.D. from the petrol pump to any other person, firm or company.

3. To complete the brief facts of this case, the petitioner company received a notice, dated 20-10-1987 issued by the Inspector, Weights and Measures, Bermu (Tenughat). In the notice, it was pointed out that on the company's premises a petrol/HSD distribution pump was in operation without its being verified and stamped; that the action of the company in having such a pump in operation on its premises was in violation of Section 11 of the Bihar Weights & Measures (Enforcement) Act, 1959 and was punishable under Section 25 of that Act. The notice went on to ask the petitioner to have its petrol pump duly verified and stamped failing which legal action would be taken against it. The petitioner gave reply to the notice pointing out that there was no need for any verification or stamping of the petrol pump as it was used for selling petrol /HSD to any third party and all the supply from the petrol pump was for the colliery's internal and

captive consumption. In reply, respondent No. 2 served upon the petitioner another notice, dated 10-11-1987 simply reiterating that the use of any equipment of weights and measures on a commercial premises without its being verified and stamped was violative of Section 11 of the Bihar Act and that the colliery being a commercial organisation of the Government of India, it was legally essential for it to have the petrol pump verified and stamped. The notice went on to direct the petitioner company to have the petrol pump verified and stamped by the Inspector, Weights & Measures who had issued the notice. Against the notice-cum-order, dated 10-1-1987 issued by the Inspector, Weights & Measures, the company filed an appeal before the Controller, Weights and Measures (Enforcement) under Section 20 of the Bihar Act. The Controller refused to entertain the appeal observing that it was barred by limitation and the petitioner was accordingly intimated by letter No. 1001. dated 31-5-1988 issued from the office of Controller, Weights and Measures.

4. The petitioner then came to this court In this writ petition, challenging the notice and the order directing it to have its petrol pump verified and stamped under the Enforcement Act.

5. Before proceeding any further it may be noted that the two notices were issued by the Inspector. Weights & Measures on 20-10-1987 and 10-11-1987. Those notices, therefore, refer to the provisions of the Bihar Weights & Measures (Enforcement) Act, 1959 but shortly thereafter a basic change in the

legal position was brought about when the State Government in exercise of the power Section 1(3) of the Central Enforcement Act, 1985 issued S.O. No. 603, dated 25-6-1988 appointing July 1, 1988 as the day on which all the provisions of the Central Enforcement Act would come into force in the whole of the State of Bihar in relation to :

(a) all classes of undertakings in the State; or

(b) all classes of goods produced, sold, distributed, marketed or transferred in the State; or

- (c) all classes of services rendered in the State; or
- (d) all classes of weights and measures manufactured, sold, distributed, marketed, transferred, repaired or used in the State; or
- (e) all classes of users of weights and measures in the State.

Thus by virtue of Section 75 of the Central Enforcement Act the State Enforcement Act stood repealed w.e.f. 1 -7-1988. It, therefore, follows that the obligation of the petitioner colliery to have the petrol pump on its premises verified and stamped will now have to be examined in the light of the provisions of the Central Enforcement Act.

6. Section 24 of the Central Enforcement Act deals with the verification and stamping of Weights and Measures. It is a long section with six sub-sections. Portions of Section 24 relevant for the present are reproduced below :

24. Verification and Stamping of weights or measures-Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being or is intended or likely to be, used by him in any transaction or for industrial production or for protection, shall, before putting such weight or measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf (hereinafter referred to as the specified place or specified time), on payment of such fees as may be prescribed.

(2) Every weight or measure referred to in Sub-section (1) shall be re-verified at such periodical intervals as may be prescribed.

Explanation -- For the removal of doubts it is hereby declared that no periodical re-verification shall be necessary in relation to any weight or measure which is used exclusively for domestic purposes.'

3. to 6. xxx xxx xxx xxx

7. From Section 24(1) it is plain and clear that a weight or measure was required to be verified and stamped if it was being used or was intended or likely to be used in any transaction or for industrial production or for protection. It may here be noted that out of the three expressions used in Section 24(1) two, namely, 'transaction' and 'protection' are defined either in the Enforcement Act itself or in the Standards of Weights and Measures Act, 1976. The expression protection is defined in Section 3(j) of the Central Enforcement Act as follows :--

(j) 'Protection' means the utilisation of any weight or measure, or any reading obtained with the help of any weight or measure for the purpose of determining whether or not any step, is required to be taken to safeguard the well being of any human being or animal, or to protect any commodity, vegetation or thing, whether individually or collectively.'

8. Though the expression 'transaction' is not defined in the Central Enforcement Act, Section 3(o) of the Act provides that the words and expressions used in that Act and not defined but defined in the Standards Act shall have the meanings respectively assigned to them In the Standards Act.

9. Section 2(2) of the Standards Act defines transaction as follows :--

'(z) 'transaction'

(i) any contract, whether sale, purchase, exchange or any other purpose, or

(ii) any assessment of royalty, toll, duty or others dues, or

(iii) the assessment of any work done, wages due or services rendered ;

10. The respondent authorities seek to justify the direction for having the petrol pump in question verified and stamped on the ground that it was being used in 'transaction.' and ('or 'industrial production'. The case of the respondents in this regard is stated in paragraph 6 of the counter affidavit filed on behalf of respondent No. 2. Paragraph 6 of the counter affidavit is as follows:

'6. That the statement made in paragraph No. 5 of the writ application has been

made only to create confusion in the matter.

It is asserted that the Central Coal Field Limited is purely a Central Government business organisation engaged in production and sale of coal here A.S.D. and petrol is an indispensable component (full) of coal production naturally effecting the cost of production H.S.D. and petrol consumed by Central Coal Field Limited is purely for coal production and related work thus the consumption of H.S.D. petrol is done purely for business purposes. So the measuring instrument for H.S.D. and petrol (Dispensing Unit) cannot be said to be domestic area. The agreement between I.O.C. and C.C.L. under head to himself, used supply (F) read as follows :--

'The consumer shall not supply any petrol/HSD from the outfit to any other person, firm or company since the outfits are intended only for the use of consumers over commercial vehicles and those employed wholly or on contract by the consumer'

From the above part of agreement it is clear that the Central Coal Field Limited is consumer and not the pump. Secondly it is clearly mentioned that the dispensing pump has to be used only for company's commercial vehicles and for the vehicles contracted by thus the use of pump cannot be treated as domestic or internal use but commercially.'

11. The above passage from the counter affidavit though not very happily and coherently worded makes it clear that the respondent authorities tried to justify their exercise of control over the petrol pump on two grounds ; one is that the petrol supplied by the petrol pump was 'an indispensable component (full) of coal production naturally effecting the cost of production', that is to say, the petrol pump was in use for industrial production. And the other is that the petrol/HSD being used in commercial vehicles of the colliery, the petrol pump was being used in transactions.

12. For examining whether the petrol pump on the premises of the Colliery was being used in any transaction it will be appropriate to examine some of the relevant clauses of the agreement under which the petrol pump was installed. The clauses of the agreement relevant for the present purpose are reproduced below

:-

1.

2.

3. That in consideration of the premises aforesaid, the consumer hereby agrees :-

(a) Not to allow any brand of petrol/ HSD other than that supplied by the corporation to be stored In the tank or delivered through the pump and take all his requirements of petrol/HSD from the Corporation.

(b) to pay for the petrol /HSD supplied by the Corporation in cash before delivery or on such terms as may from time to time be agreed by the Corporation and at the rates fixed by the Corporation from time to time.

(c) to (e) . . .

(f) the consumer shall not supply any petrol/HSD from the outfit to any other person, firm or company since the outfits are intended only for the use of consumer's own commercial vehicles and those employed wholly or on the contract by the consumer.

4. (a) That the Corporation will maintain and keep the outfit in the proper working order as it should think necessary. The outfit shall be and remain the absolute property of the Corporation, and the Corporation may at any time freely and without let or hindrance by the consumer, his servants or agents enter upon the said premises to inspect, test, repair, the outfit or any part thereof, affix the Corporation's name plates thereto and look and /or seal the whole or any part thereof against hindrance by the consumer or third parties. But in the event of any damage being done to the outfit by the consumer his servants or agents due to their negligence, the Corporation shall be entitled to remove the outfit or any part thereof at the cost of the consumer.

(b) . . .

(c) The consumer shall get the dispensing unit calibrated by Weights and Measures Department or any other appropriate Authority or the State/Central

Government as the case may be at their own costs from time to time as may be required under law in force. However, on the written request of the consumer the Corporation will get the dispensing unit calibrated from time to time as may be required under the law and the consumer in such circumstances reimburse the amounts that may be spent by the Corporation within a period of one week from the receipt of demand preferred by the Corporation against the consumer in that behalf.'

13. From Clause 3(f) it is evident that

from the petrol pump in question no amount of petrol /HSD was to be sold or supplied by the petitioner company to any third party and the petrol pump with its underground tank was simply in the nature of a storage facility provided by the Corporation to the petitioner company and the petrol/HSD from the underground tanks be used only for running the company's own commercial vehicles and those employed by the company wholly or on contract.

14. Similarly from Clause 3(d) it is plain and clear that the incidence of sale of the petrol/HSD supplied by the Corporation to the company was complete at the stage of delivery of the petrol/HSD in the underground tanks installed for the storage purpose, the price of petrol/HSD having been paid before the delivery. The ownership in the petrol/HSD on its delivery for storage in the underground tanks vested in the petitioner company. And, hence at the time when petrol/HSD stored in the underground tanks was filled through the vent pipe into the company's vehicles, there was no incidence of any transaction or sale for the simple reason that there was no two parties being seller and buyer and the company could not possibly sell its own petrol/HSD to itself.

15. It is indeed true that there was Clause 4(c) in the agreement, obliging the company to get the dispensing unit calibrated by Weights and Measures Department but that obligation was qualified by stating, 'as may be required under law in force'. And the whole issue in this case is whether the petitioner company is legally obliged to have the petrol pump verified and stamped as insisted upon by the weights and measures authorities.

16. On the basis of Sub clauses (b) and (f) of Clause 3 of the Agreement as quoted above there is hardly any room for doubt that the petrol pump was not used in any transaction within the meaning of Section 2(z) of the Standards Act, as the act of filling petrol/ HSD in the colliery's commercial vehicle from the petrol pump does not involve any contract or an assessment of any dues or an assessment of any work done or services rendered etc. It must, therefore, be held that the respondents' intended exercise of control over the petrol pump on the ground that it was used in transaction was unjustified and unfounded.

17. Next comes the question of industrial production. As noted above, the expression 'industrial production' is not defined either in the Standards Act or in the Central Enforcement Act and therefore its meaning has to be gathered on the basis of the objects and purposes of the two Acts and other attending facts and circumstances.

18. In the statement made in the paragraph 6 of the counter affidavit, as quoted above, an attempt is made to give the expression industrial production a very extended meaning. It is suggested that running of commercial vehicles and operation of machines being essential for the mining of coal, the supply of petrol in those vehicles and machines should also be construed as forming part of the industrial production it is stated that the quantities in which petrol/ HSD is consumed for the mining of coal would finally have an effect on the cost of production and therefore the supply of petrol/HSD in the commercial vehicles and machines required to be controlled and regulated by verification and stamping of the petrol pump. In other words, the control and regulation over the petrol pump is sought to be justified on the plea that it would finally have a bearing on the cost price of coal. In my view it will be hardly reasonable to put such expanded and extended meaning on the expression 'industrial production'. This does not seem to be In conformity with the object and purpose of the two Acts. The object of the Standards Act is as follows :--

'An act to establish standards of weights and measures, to regulate inter-State trade or commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and to provide for matters connected

therewith or incidental thereto.'

The object of the Central Enforcement Act is as follows :--

'An Act to provide for the enforcement of the Standards of weights and measures established by or under the Standards of Weights and Measures Act, 1976 and for matters connected therewith or incidental thereto.'

19. From the objects of the two Acts it does not appear that the provisions of the two Acts were Intended to exercise control over such remote possibilities as the use of petrol affecting the final cost price of coal. It is not the object and purpose of the two Acts and it can not be within the powers and functions of the authorities under the Enforcement Act to exercise regulatory control over public sector undertakings for lowering down their cost of production. Some amount of control and regulation is necessary but as experience shows any over-control is a bane of industrial process and industrial growth besides being source of corruption.

20. In my considered view the expression 'industrial production' is used in Section 24 of the Enforcement Act in a more direct, immediate and proximate sense. The control of weights and measures used for industrial production can only be to ensure that the materials constituting the ingredients of the final industrial produce are being supplied in correct weight and measure and there might not be any short supply or deficiency of the ingredients in the final produce. Section 24 thus envisages control of weights and measure over materials which go directly as inputs in an industrial production; in other words, the materials forming the ingredients of the industrial produce. In appropriate cases the provision of Section 24 may perhaps be extended even to cover materials which are used as catalysts or reagents in an industrial production. But in all cases the control under Section 24 of the Enforcement Act will be aimed at ensuring the fullness and completeness of the industrial produce. In no case the control will be aimed at regulating the cost price of the industrial produce. This is for the simple reason that regulating and controlling the cost price of industrial produce is not the object of either the Standards Act or the Enforcement Act.

21. Viewed In the light of the above, it must be held that the petrol pump installed on the colliery premises under its agreement with the Indian Oil Corporation is not used In any Industrial production. It is, therefore, not legally liable to be verified and stamped by the weights and measures authorities. The two notices and the order coining under challenge in this writ petition arc accordingly set aside and the respondent authorities are restrained from taking any coercive measures against the petitioner colliery compelling it to have the petrol pump verified and stamped.

22. In the result, this writ petition is allowed but with no order as to costs.

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