

State Vs. Mohanlal Devichand Shah

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SooperKanoon Citation : sooperkanoon.com/336763

Court : Mumbai

Decided On : Feb-04-1963

Reported in : AIR1964Bom67; (1963)65BOMLR245; 1964CriLJ330; [1963(6)FLR407]; ILR1963Bom631; (1963)IILLJ241Bom

Judge : S.H. Naik, J.

Acts : [Minimum Wages Act, 1948](#) - Sections 2, 3, 5, 5(2), 18, 19, 22, 22A, 22B, 22B(1) and 27

Appeal No. : Criminal Appeals Nos. 779 and 780 of 1962

Appellant : State

Respondent : Mohanlal Devichand Shah

Judgement :

1. These two appeals preferred by the State Government from the orders of acquittal raise common questions of law and fact and can, therefore, be disposed of by the same judgment. The accused was working a stone quarry at Lonavala. For carrying on that work, he had employed a few workers. On 21 April, 1961, the inspector appointed by the Central Government inspected the quarry and found the following failures :

(1) Notices required by rule 22 of the Minimum Wages (Central) Rules, 1950, were not displayed.

(2) A register of wages as required by rule 26(1) of the said rules was not maintained at the workspot.

(3) A register of overtime as required by rule 25(2) of the said rules was not maintained.

(4) A register of fine or deduction for damage was not maintained at the work spot as required by rule 21(4) of the said rules.

(5) Wages slips to the workers were not issued as required by rule 26(2) of the said rules.

(6) A muster roll was not maintained at the work spot as required by rule 26(5) of the said rules.

2. Consequently, the inspector lodged two complaints, the first in respect of the first three failures (case No. 764 of 1961) and the second in respect of failures No. 4 to 6 (case No. 763 of 1961), under S. 22A read with S. 18 of the [Minimum Wages Act, 1948](#).

3. The accused contended that it was not necessary to keep the registers on the workspot, nor was it practicable to do so as the spot was an open space. He further contended that the inspector appointed by the Central Government had no authority to lodge the complaints and the Court cannot take cognizance of the complaints filed by him, under S. 22B(b) of the Minimum Wages Act. This trying Magistrate treated the second point as a preliminary objection and on a consideration of the provisions of the Minimum Wages Act and some other relevant provisions, came to the conclusion that the inspector appointed by the Central Government was not competent to lodge the complaints. Consequently, he discharged the accused on all the counts. It is from these decisions that the State has preferred these two appeals.

4. Now, it is necessary to refer to some of the provisions of the Minimum Wages Act for appreciating the rival contentions raised in these appeals. The Act has been passed with a view to provide for minimum rates of wages in certain employments and the enforcement of the provisions of the Act is entrusted to

either the Central Government or the State Government, as the case may be. Section 2(b) of the Minimum Wages Act (hereinafter called as the Act) defines 'appropriate Government' as :

'(i) in relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration or in relation to a mine, oilfield or major port, or any corporation established by a Central Act, the Central Government; and

(ii) in relation to any other scheduled employment, the State Government.'

5. The expression 'scheduled employment' has been defined in S. 2(g) of the Act to mean

'. . . an employment specified in the schedule, or any process or branch of work forming part of such employment.'

6. Section 3 of the Act authorizes the appropriate Government to fix minimum rates of wages in regard to the employment specified in Parts I and II of the schedule respectively and prescribe the procedure in that behalf. Section 5 lays down the procedure for the fixing and revising of minimum wages. Section 5(2) provides that after following the procedure prescribed by the said section, the appropriate Government shall, by notification in the official gazette, fix, or as the case may be, revise the minimum rates of wages in respect of each scheduled employment, and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue. Section 19 provides that the appropriate Government may appoint such persons as it thinks fit to be inspectors for the purposes of this Act and defines the local limits within which they shall exercise their functions. Sub-section (2) of the said section defines the power of the inspector so appointed. Section 22B relates to the cognizance of offences. Sub-section (1)(b) is relevant for our purposes, and it runs thus :

'No Court shall take cognizance of a complaint against any person for an offence -

(b) under Clause (b) of S. 22 or under S. 22A except on a complaint made by, or with the sanction of, an inspector.'

7. Section 27 relates to the power of State Government to add to the schedule and it runs thus :

'The appropriate Government, after giving by notification in the official gazette not less than three months' notice of its intention so to do, may by like notification add to either part of the schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the schedule shall in its application to the State be deemed to be amended accordingly.'

8. The schedule to the said Act is in two parts. Part I contains 17 items. Item 8 is relevant for the present discussion and it reads as follows :

'Employment in stone-breaking or stone-crushing.'

9. The Maharashtra Government has added a few entries to the schedule, which need not be considered here.

10. The main contention raised by the defence is that the employment in the present case is an employment in respect of which the State Government is the appropriate Government and, therefore, the inspector, who is authorized to lodge a complaint under S. 22B(1)(b) of the Act is the inspector appointed by the State Government, and since the complaints in the present case have not been lodged by the inspector appointed by the State Government, but have been lodged by the inspector appointed by the Central Government, the complaints are incompetent and no cognizance can be taken on the basis of these unauthorized complaints. Now, the wording of S. 22B(1)(b) of the Act is somewhat general. All that the section says is that no Court can take cognizance of a complaint except on a complaint made by, or with the sanction of, an inspector. Inspectors are appointed both by the State Government as also by the Central Government in respect of the scheduled employments that fall within their respective purview. Section 19 of the Act empowers the appropriate Government to make appointment of inspectors and defines the local limits within which they are to exercise their functions. All that the wording of S. 22B(1)(b) of the Act suggests is that the status of the person lodging a complaint or sanctioning the lodging of a complaint of a complaint

should not be inferior to that of an inspector. Even so, the question as to whether in a particular case, it is the inspector appointed by the State Government or by the Central Government, who is competent to lodge a complaint has to be decided with reference to the employment falling within the purview of the Central or the State Governments, which is determinative of the question as to which Government is the appropriate Government. The definition of the expression 'appropriate Government' again has relation to the scheduled employments carried on by the respective Governments. The Central Government is the appropriate Government in relation to the scheduled employment carried on

(1) by or under the authority of the Central Government or a railway administration,

(2) or in relation to a mine, oilfield or major port, and

(3) or any corporation established by a Central Act.

11. The State Government will be the appropriate Government in relation to any other scheduled employment.

12. The main argument that was advanced by Mr. Kotwal, on behalf of the State, was that the stone quarry, which is being worked by the accused, is a mine, and therefore the scheduled, employment under item 8 of the schedule is an employment in relation to a mine and the appropriate Government will be the Central Government. The definition of 'scheduled employment' as defined in S. 2(g) of the Act is simple and means an employment specified in the schedule. The schedule does not refer to operations in a mine either in Part I or Part II. The employment referred to in item 8 of the schedule is not necessarily connected with mining operations, because the activities of stone-breaking and stone-crushing can be independent of a mine or even a quarry. If the scheduled employment mentioned at item 8 of the schedule is not connected with a mine, then evidently the appropriate Government in respect of this scheduled employment would be the State Government. Mr. Kotwal, however, contended that a quarry is a mine and the activities of stone-breaking and stone-crushing, in so far as they are connected with a quarry, have a necessary relationship with a mine. Consequently, he argued that in respect of item 8 of the schedule, the appropriate Government will be the

Central Government as soon as it is found that the operations of stone breaking and stone-crushing are connected with a stone quarry, which, according to him, is necessarily a mine. In elaboration of this argument, he has taken me through the provisions of the Mines Act (XXXV of 1952) and the Mines and Minerals (Regulation and Development) Act (LXVII of 1957).

13. The Mines Act has defined the terms 'mine' and 'minerals' in Cls. (j) and (jj) respectively of S. 3 of the Act. Under Clause (j), 'mine' means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on. That takes us to the definition of 'minerals' contained in Clause (jj), which means all substances which can be obtained from the earth by mining, digging drilling, hydraulic, quarrying or by any other operation and includes mineral oils, which in turn includes natural gas and petroleum. Mr. Kotwal, therefore, contended that stone, which is taken out by the process of drilling or quarrying or by any other operation, is a mineral and stone quarry is a mine as stone has been obtained therefrom by the process of excavation. For reinforcing this argument, he referred to the definition of 'minerals' and 'minor minerals' as contained in Cls. (a) and (e) of S. 3 of the Mines and Minerals (Regulation and Development) Act. Clause (a) does not give the definition of minerals. It merely says that all minerals except mineral oils are included in the definition of 'minerals.' This definition is an inclusive definition. Clause (e) defines 'minor minerals' to mean :

'... building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the official gazette, declare to be a minor mineral.'

14. Mr. Kotwal emphasized the expression 'building stones' contained in the above definition and pointed out that for the purpose of the Act, building stones are minor minerals. Mr. Kotwal then referred to item 54 in List I (Union List) of the Seventh Schedule to the Constitution of India under which

'Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest,'

15. is a Union subject. The Mines Act of 1952 and the Mines and Minerals (Regulation and Development) Act of 1957 are the Acts passed by the Parliament for the regulation of mines and mineral development. He also referred to item 23 in the list II (State List) of the Seventh Schedule of the Constitution, under which the right of regulation of mines and mineral development by the State Government is made subject to the provisions of List I with respect to regulation and development under the control of the Union. The regulation of mines and mineral development, therefore, is primarily a Union subject and the operation of the State would be restricted to the field, which is not covered by an enactment passed by the Parliament for the regulation of mines and mineral development. In view of the provisions of item 54 in list I and item 23 in List II of the Seventh Schedule of the Constitution and the provisions of the Mines Act of 1952 and the Mines and Minerals (Regulation and Development) Act of 1957, it does appear that the word 'mine' has been given the widest connotation and on a strict interpretation of these provisions, even a stone quarry can fall within the definition of the word 'mine' and can come under the regulation and control of the Central Government.

16. Mr. Kavlekar, on behalf of the accused, contended that inclusion of a quarry in the definition of 'mine' is revolting to commonsense and is also opposed to the established meaning of the word 'mine.' In this connexion, he referred me to the meaning of the word 'mine' as given in the Oxford English Dictionary, Vol. VI, p. 463. The meaning given is as follows :

'An excavation made in the earth for the purpose of digging out metals or metallic ores, or certain other minerals, as coal, salt, precious stones.'

17. Mr. Kavlekar contended that the wider meaning of the word 'mine' to include building stones is now outdated and the meaning that has been attached to that word in recent times is based on the deposit of minerals such as, metals or metallic ores, coal, salt, precious stones, etc. He also referred to the meaning of the word 'mineral' in the same dictionary at p. 466, which is as follows :

'Any substance which is obtained by mining; a product of the bowels of the earth. In early and in modern technical use, the ore (of a metal).'

18. Mr. Kavlekar also referred me to Stroud's Judicial Dictionary, Vol. 3, p. 1792, wherein the meaning of the words 'mines' and minerals' is given as follows :

'The primary meaning of the word 'mine,' standing alone, is an underground excavation made for the purpose of getting minerals . . . '

19. Minerals means :

'Primarily all substances - other than (and underneath) the agricultural surface of the ground which may be got for manufacturing or mercantile purposes, whether from a mine, as the word would seem to signify, or such as stone or clay, which are got by open working . . . The particular signification of each of these words may be varied largely by the context . . . '

20. I am unable to understand how the meaning of the words 'mines' and 'minerals' in Stroud's Dictionary supports Mr. Kavlekar's contention. At p. 1794 of the same dictionary, reference has been made to the decided cases wherein stone got by quarrying has been included in minerals. In my view, the entire discussion as to whether a stone quarry falls within the definition of mine is of academic interest. In its broadest sense, a stone quarry can fall within the category of a mine as defined in the mines Act of 1952 or the Mines and Minerals (Regulation and Development) Act of 1957. In view of the language of the items at 54 in List I and 23 in List II of the Seventh Schedule of the Constitution, the main point to be considered is, whether the Parliament has passed any law for regulating the stone quarries. The power of the Parliament to pass a legislation in respect of a stone quarry can hardly be disputed. If the Parliament passes an enactment regulating the stone quarries, then evidently the Central Government would be the appropriate Government. It would be competent to the Parliament to mention an employment in respect of the operation of a stone quarry as a scheduled employment, by including it in the schedule attached to the Minimum Wages Act. The schedule, however, does not mention either a mine or a stone quarry and item 8, viz., employment in stone-breaking and stone-crushing, cannot, therefore, be said to be an employment in respect of mine whether in its broadest sense so as to include a stone quarry or in the narrow sense as given in the Oxford English Dictionary. It is significant to note that under S. 27 of the Act of 1948, the Central

Government has no power of adding items to the schedule of the Act. On the other hand, it is open to the State Government under that section to add to the schedule any employment in which, according to the State Government, it is necessary to fix minimum rates of wages.

21 Mr. Kotwal contended that item 8 in the schedule of the Act, as it stands today, is applicable to the operations of stone-breaking and stone-crushing carried on in a stone quarry and since a stone quarry is a mine, the appropriate Government is the Central Government. He had to concede that item 8 of the schedule, as it stands today, might not have relation to a mine other than a stone quarry and any employment in such a mine may not fall under the purview of item 8 of the schedule. He went on to make a distinction between the process of stone-breaking and stone-crushing, which is an integral part of the main operation of mining and an incidental part of such an operation. Mr. Kotwal agreed that when the process of stone-breaking and stone-crushing is ancillary to the principal mining operation, the employment in respect of the process of stone-breaking and stone-crushing would not be covered by item 8 of the schedule. According to him, the position of the employment of stone-breaking and stone-crushing when it goes on in respect of a stone quarry stands on a different footing, because the essence of quarrying operations consists in the breaking and crushing of stone. In advancing these arguments, Mr. Kotwal has kept before his mind the decision of the Supreme Court in *Madhya Pradesh Mineral Industry Association v. Regional Labour Commissioner* : (1960)IIILLJ254SC . The facts of that case were as follows :

22. By a notification by the president of India under Art. 258 of the Constitution, the Central Government delegated to Governments of certain States including the Madhya Pradesh with their consent, its functions relating to fixation of minimum rates of wages in respect of employees employed in stone-breaking and stone-crushing operations carried on in mines within their respective States. Pursuant to the said delegation the Madhya Pradesh Government issued the impugned notification purporting to act under S. 5(2) of the [Minimum Wages Act, 1948](#), prescribing minimum rates of wages for employment in stone-breaking or in stone-crushing operations carried on in mines. On a write application by the appellant-company to quash that notification as ultra vires, contending that the notification

cannot fasten upon the manganese mining industry the character of employment in stone-breaking or stone-crushing, it was held (reversing the decision of the High Court) :

'(i) that the impugned notification under S. 5(2) of the Minimum Wages Act had not the effect of adding an entry in the schedule to the Act, for which appropriate notification has to be under S. 27 of the Act,

(ii) that, in the context, the terms 'stone-breaking' or 'stone-crushing' referred to in item 8 of the schedule to the Act are confined to operations in quarries and do not cover stone-breaking or stone-crushing operations which are carried on in mines and that therefore the impugned notification is ultra vires, and

(iii) that the impugned notification of the Madhya Pradesh State Government being ultra vires, the State cannot fall back upon the president's notification for support.'

23. Mr. Justice Gajendragadkar, who delivered the judgment of the Court, posed the following question (p. 259) :

'. . . When the schedule refers to the employment of stone-breaking or stone-crushing does it refer to the incidental stone-breaking or stone-crushing in connexion with manganese mine operations ?'

24. His lordship then proceeds to answer the question in the following terms (p. 259) :

'. . . In a chemical or a geological sense stones may include manganese and that is one of the meanings given to the word in the Shorter Oxford Dictionary. On the other hand, the word 'stone' as popularly understood in ordinary parlance particularly when it is coupled with the word 'breaking' or 'crushing' would exclude manganese . . . Employment in stone-breaking or stone-crushing in this sense would refer to quarry operations. Thus whether or not the word 'stone' should be understood in the wider sense or in a limited sense must depend upon the context in which the word is used. The intention which is reasonably deducible from the context would decide whether it is the expanded meaning or the limited meaning of the word that can be accepted. The same consideration could apply to the

denotation of the word 'employment.' We have carefully considered all the items in the schedule and have taken into account the general beneficent policy of the Act but we are unable to hold that when item 8 refers to stone-breaking or the stone-crushing it is intended to cover the breaking or the crushing of stones incidental to the manganese mining operations. The context seems to exclude the application of the wider meaning of the word 'stone' used in item 8. Therefore, our conclusion is that the stone-breaking or stone-crushing operations which are carried on in mines are not included in item 8 in the schedule; and if that be the true position, the impugned notification issued by the State Government under S. 5(2) is ultra vires.'

25. A little later, the learned Judge has observed in the same judgment :

'As it stands, the entry is, in our opinion, confined to stone-breaking and stone-crushing employment in quarries and not in mines.'

26. I am unable to understand how these observations in any way help Mr. Kotwal in the argument that he is advancing. On the other hand, these observations cut the ground under the foot of his argument. It may be that in the widest sense a stone quarry falls in the category of a mine. The Supreme Court has emphasized that the operation of stone-breaking and stone-crushing is only ancillary to the mining operations carried on in a manganese mine. The wording of item 8 in the schedule indicates that the operation of stone-breaking or stone-crushing should be independent and should stand by itself. Thus the operation is integrally connected with a stone-quarry and the entire process of extracting stones is carried on by continuous breaking and crushing of stone in the quarry. The operation of stone-breaking and stone-crushing may as well be entirely dependent even of a stone quarry. For instance, stones may be broken and crushed for the purpose of pounding them to small pieces, or even to sand so as to serve as a mixture with cement and for any other purpose. This work may be carried on and is usually done so, outside the quarry and beyond the site of the quarry. Whatever that may be, the essence lies in the operation of stone-breaking and stone-crushing being sui generis and not being dependent upon or ancillary to other operations. Unless, therefore, the Parliament amends item 8 of the schedule so as

to include the operation of stone-breaking and stone-crushing in a stone quarry, or in all mines including a stone quarry, it is not possible to hold that the appropriate Government would be the Central Government, merely on the basis that, in its widest connotation, the words 'stone quarry' may fall within the ambit of the word 'mine.'

27. If the appropriate Government, so far as the scheduled employment at item 8 of the schedule is concerned, is the State Government, then it follows that the inspector, who is competent to file a complaint in respect of the breaches of the various provisions of the Act, is the inspector appointed by the State Government under S. 19 of the Act. Since the complaints, in this case, have been lodged by an inspector appointed by the Central Government, the Court cannot take cognizance of those complaints under S. 22B(1)(b) of the Act.

28. The result is that the appeals fail and are, therefore, dismissed.