Central Coalfields Ltd. Vs. the State of Bihar and anr.

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Court : Jharkhand

Decided On : May-19-2009

Reported in : 2009(57)BLJR2139; (2009)IVLLJ774Jhar

Judge : Ajit Kumar Sinha, J.

Acts : Factories Act, 1948 - Sections 2(K) and 9; Factories (Amendment) Act, 1976; Mines Act, 1952 - Sections 2(1); Coal Nationalization Act - Sections 2 and 3; Central Excise Act; Bihar Factories Rules

Appeal No. : C.W.J.C. No. 200 of 2000(R)

Appellant : Central Coalfields Ltd.

Respondent : The State of Bihar and anr.

Advocate for Def. : J.C. to G.A.

Advocate for Pet/Ap. : Ananda Sen and; Kaushal Agrawal, Advs.

Disposition : Petition allowed

Judgement :

Ajit Kumar Sinha, J.

1. The present writ petition has been preferred for an appropriate writ, order or direction for quashing the letters dated 23.5.1998, 7.4.1999 and 19.4.1999 issued

by the respondent No. 2 whereby and whereunder the respondent No. 2 has directed the petitioner to register the water treatment plant at Patratu Water Works of the petitioner under the Factories Act as the said water treatment plant according to the respondent No. 2 comes within the definition of the Factories Act. The further prayer is for issuance of an appropriate writ, order or direction for a declaration that the water treatment plant is not a factory within the meaning of the Factories Act.

2. The facts, in brief, are set out as under:

The water treatment plant of the petitioner was inserted by the respondent concerned and notice was issued on 23.5.1998 to register the water treatment plant under the provision of Factories Act. The petitioner gave reply vide its letter dated 27.2.1999 stating inter-alia therein that the Factories Act is not applicable as the petitioner's water treatment plant does not come within the definition of the Factories Act. Again, a notice was issued on 7.4.1999 stating that the manufacturing process was being carried out in the plant and this it was mandatorily registered under the Factories Act followed by another letter dated 19.4.1999. The petitioner being constrained preferred this writ petition challenging the aforesaid notices.

3. The main contention raised by the learned Counsel for the petitioner is that there was no manufacturing process and the plant was set-up as welfare measure to supply fresh and purified water to the citizen of the locality. It has further been submitted that it cannot be said to be a factory more so when it was situated within the mining area.

4. The respondents in their counter affidavit have submitted that under Section 9 of the Factories Act, 1948 the inspector of Factories was empowered to inspect the place and examine it wherever he has reasons to believe that the plaint is being used as a factory. It has further been submitted that Section 2(K)(i)(ii) of the Factories Act defines manufacturing process and it was in these backgrounds notices were issued for registration under Factories Act read with Bihar Factories Rules. The petitioner was also requested to submit the map, site plan, application etc.

5. I have considered the rival submissions and pleadings. Section 2(k) and (m) defines 'manufacturing process' and 'factory' which are quoted as under:

(k) 'manufacturing process' means any process for -

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance; or;

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; [Ira-6] [Ira-7 or Ira-7]

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; (Inserted by the Factories (Amendment) Act, 1976, w.e.f. 26-10-1976.)

(vi) preserving or storing any article in cold storage;

(m) 'factory' means any premises including the precincts thereof -

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and In any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place;

Explanation I : For computing the number of workers for the purposes of this clause all the workers in different groups and relays in a day shall be taken into account.

Explanation II: For the purposes of this clause, the mere tact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof;

6. However, Section (j) of the Mines Act, 1952 defines mines and Section 2(h) of the Coal Nationalization Act also defines mines which are inclusive definition. A broad definition has to be read in the context that any thing and every thing used in relation to a mine is included under the definition of mine under Section 2(h) and the same is a vested property free from all encumbrances. By virtue of Section 3 of the Coal Nationalization Act, the right, title and interest of owners in relation to the coal mines specified in the Schedule is to transfer to and vested absolutely in the Central Government free from encumbrance from the appointed date i.e. 1.5.1973. In the Coal Nationalization Act, the owner has been defined in Section 2(i) which means and includes any person who is the immediate proprietor or lessee, occupier of the mines when used in relation to a mine.

7. The Hon'ble Supreme Court had the occasion to consider a similar issue reported in : AIR 1997 SC1599 (BCCL v. Madan Lal Agrawal) wherein a Bench of three Hon'ble Judges settled the conflicting law and judgments on the issue. At para 26 it held as under:

26. The two key words for the purpose of interpreting Section 3 are 'mine' and 'owners'. If we look at the definition of a 'mine' under Section 2(h), the definition is designed to cover:

(1) all properties 'belonging to the mine' whatever be the nature of these properties, as also specified properties 'belonging to the owner of the mine'. Thus, for example, Section 2(h)(xii) is an omnibus clause which covers all fixed assets, moveable and immovable, belonging to the owner of a mine wherever situate and current assets belonging to a mine whether in its premises or outside. Section 2(h)(viii) covers all coal belonging to the owner of the mine. Section 2(h)(x) covers all lands, buildings and equipment belonging to the owners of a mine, and in, adjacent to or situated on the surface of the mine, where washing of coal or manufacture of coke is carried on.

(2) In addition, the definition of 'mine' also covers all those assets which are required for a proper functioning of the mine irrespective of whether these assets 'belong' to a mine or not. Thus, for example, Section 2(h)(vi) covers all lauds, buildings, machinery and equipment, instruments stores, vehicles, railways, tramways etc. adjacent to a mine and used for the purposes of the mine. Therefore, all these assets if they are lying adjacent to a mine and are required for the proper functioning of the mine would be acquired irrespective of whether they belong to the 'owner of a mine' or not. Similarly under Section 2(h)(ix) all power stations in a mine operated primarily for supplying electricity for the purposes of working the mine or a number of mines under the same management will be acquired irrespective of whether the power stations belonged to the mine or owner of the mine, or not. Sub-clause (xi) of Section 2(h) provides that all other [other than those in Sub-clause (x)] lands and buildings wherever situated, if solely used for the location of the management, sale or liaison offices or for the residence of officers and staff of the mine are also acquired. Unlike Sub-clause (x), SUB-CLAUSE (xi) does not contain the words 'belonging to the owners of the mine'. Therefore, the definition clause of 'mine' covers at least two different kinds of property: (i) properties which belong to the mine and (ii) properties which are used by the mine for a proper functioning of the mine. The first category of properties would be properties which are of the ownership of the mining company. The second category of properties need not necessarily be of the ownership of the mining company. These could also be properties which are leased by the mining company or in possession of the mining company and used by it.

8. Again a similar issue came up for consideration before the Hon'ble Supreme Court preferred by a subsidiary coal company (South Eastern Coalfields Ltd. v. Commissioner, Customs & Central Excise, M.P.) reported in : 2006(200)ELT357(SC) . In this case issue related to definition of work shall be ad defined under Section 2(i)(j)(8) of the Mines Act and the same is quoted as under:

Section 2(1)(j)(viii) of the Mines Act states that mine includes:

2. (1)(j)(viii) all workshops and stores situated within the precincts of a mine and under the same management and used primarily for the purposes connected with

that mine or a number of mines under the same management;The word process in relation to a mine was considered in great detail by the Hon'ble Supreme Court and at para-14 of the Judgment the Hon'ble Supreme Court held as under:

14. In our opinion the registration of a mine under the Factories Act has nothing to do with the assessee's claim for exemption under the Central Excise Act. In fact the reference to the Factories Act itself was wholly irrelevant and we fail to see what the Factories Act has to do with the present case. The present case is covered by the Central Excise Act and has nothing to do with the Factories Act. Hence the view taken by the Tribunal is, with due respect to it, clearly erroneous.However, at para-23 and 24 it held as under:

23. However, where the meaning of a word or expression is not clear, obviously the literal rule of interpretation cannot be applied, and hence we have to take resort to other rules of interpretation e.g. Heydon's mischief rule, the purposive rule, etc. In our opinion in the present case the purposive rule should be applied. Under this rule, we have to see the purpose for which the provision was made. Looking at it from this angle, we are of the opinion that the word 'precincts' has to be given the broader meaning and not the narrower meaning.

24. In other words, we have to interpret the word 'precincts' in the exemption notification to mean the surrounding region or area, as defined in Collin's English Dictionary or the surroundings or environs of a place as defined in New Shorter Oxford English Dictionary. This is because the purpose of the exemption notification is to grant exemption from excise duty to goods produced in a mine so as to encourage the mining industry. A workshop which is in an area in the environs of a mine and is existing solely for the purpose connected with the mine and under the same management, is obviously directly serving the mining operations. Hence, we have to interpret the notification so as to include such a workshop within the definition of a mine for the purpose of grant of exemption, as that would encourage the mining industry.

9. Even under the definition of manufacturing process as provided under Section 2(k) of the Factories Act, the water treatment plant cannot be termed to be a manufacturing process and it cannot come within the definition of Factory as

defined under Section 2(m) of the Factories Act. There is no dispute about the fact rather it has been admitted by the respondent that the water treatment plant is in the mining area and the same is being used in relation to a mine. There is also no dispute about the fact that the water treatment plant is used to purify water for supply to its employee and citizen of the locality in the mining area or adjacent to it without charging any cost and the same and it is only for the welfare purpose and not for commercial purpose and thus, it neither produces any thing nor manufactures any thing to be covered under Section 2(k) of the Factories Act.

10. Even the water is not generated or produced from under ground of the earth but instead the raw water as supplied by PTPS is purified and supplied to its employees and people of the locality in the mining area and thus by any stretch of imagination it cannot be termed as a manufacturing process and or to be included in the definition of factory. The provisions under Section 2(k)(i) and under Section 2(m)(i) and (ii) of the Factories Act, 1948 is not at all applicable but instead it is covered under the inclusive definition under Section 2(j) of the Mines Act, 1952 as well as under Section 2(h) of the Coal Nationalization Act since the water treatment plant is installed for ancillary purposes for its use in Syal-D colliery and hence it falls within the definition of Section 2(j) of the Mines Act. There is no manufacturing process involved or carried out in the water treatment plant since it is only used for purification purposes and there is no dispute about the fact that the plant is situated in a mining area and as such the provisions of the Factories Act is not applicable and the issuance of notice is an error of jurisdiction and authority.

11. A process is a manufacturing process when it brings out a complete transformation for the whole components so as to produce a commercially different article or a commodity. The Hon'ble Supreme Court time and again has held that the word 'manufacture' used as a verb is generally understood to mean as 'bringing into existence a new substance' and does not mean merely 'to produce some change in a substance', however minor in consequence the change may be. ''Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use.'

Thus, in the instant case there is neither any manufacture nor any manufacturing process involved in providing purified water in a mining area to bring it into the domain of the provisions of Factories Act.

12. Considering the aforesaid facts and circumstances of the case, this writ petition is allowed and the impugned notices dated 23.5.98, 07.04.1999 and 19.04.1999 to register the water treatment plant under the Factories Act is hereby quashed as it suffers from error of jurisdiction and lack of authority.