

Sarker Bakery Vs. Authority Under the Payment of Wages Act and anr.

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Court : Kolkata

Decided On : Sep-18-1961

Reported in : (1962)ILLJ183Cal

Judge : B.N. Banerjee, J.

Appellant : Sarker Bakery

Respondent : Authority Under the Payment of Wages Act and anr.

Judgement :

B.N. Banerjee, J.

1. The petitioner firm carries on business as a baker of loaves of bread and of biscuits and has its bakery at 7/1, Gas Street, Calcutta. The respondent 2, Sk. Pir Ali, used to work as a workman in the bakery of the petitioner firm. He was discharged from service without notice. For unpaid wages for the period December 1957 to 28 January 1958, the petitioner claimed a sum of Rs. 95-1-0 and also a further sum of Rs. 50 as a month's pay in lieu of notice. For recovery of the aforesaid sums he started a proceeding before the Authority under the Payment of Wages Act (IV of 1936).

2. Amongst other points taken in defence, the petitioner firm took the point that it was not a factory and as such the Authority under the Payment of Wages Act (IV of 1936) had no jurisdiction over itself.

3. The evidence adduced before the Authority established that about 23 or 24 persons worked in the bakery and all the operations therein were performed by manual labour.

4. The Authority, however, rejected the contention of the petitioner firm that it was not a factory, with the following observations:

(a) In his evidence, the applicant says that 23 or 24 men worked at the bakery and he found names of 23 or 24 workmen in the payment register.

(b) It is seen that the bakery is a partnership concern and there must be registers of attendance of employees and payment to them and also accounts to show production and Bale. I am inclined to hold these registers have been withheld from production at the Court. So in the absence of any evidence to the contrary, I would hold that the O.P.'s bakery is a factory and the applicant is entitled to file his claim under the Payment of Wages Act.

5. Thereafter, the Authority came to the further conclusion that the amount claimed by respondent 2 was due from the petitioner firm, on the following line of reasoning:

As regards the amount claimed by the applicant, the onus lies on the O.P. to prove that it is not due. The O.P.'s bakery is a factory, as manufacturing process is carried on there for production of loaves and biscuits. So it is essential on the part of the O.P. to produce the register of payment of wages or in its absence receipts taken from the employees on payment of their wages. Neither the register nor any receipt has been produced. This default gives rise to the reasonable presumption that the applicant has not been paid his dues.

6. On the above finding, the Authority directed the petitioner firm to deposit Rs. 111-9-0, inclusive of claim, Court fees and costs. The propriety of the order is being disputed before me in this rule.

7. Sri Rabindra Nath Mitter, learned Advocate for the petitioner firm, drew my attention to the definition of 'factory' in Section 2(i) of the Payment of Wages Act (IV of 1936) as it stood at the material time, namely:

'Factory' means a factory as defined in Clause (j) of Section 2 of the Factories Act/1934.

8. He also drew my attention to Clause (j) of Section 2 of the Factories Act (XXV of 1934), which defined 'factory' as.

factory means any premises including the precincts thereof 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 with the aid of power, or is ordinarily carried on, but does not include a mine subject to the operation of the Mines Act, 1923.

9. Since admittedly the bakery of the petitioner firm is not and was not, at any time worked by power, Sri Mitter contended the bakery of the petitioner was not a factory and did not come within mischief of the Payment of Wages Act.

10. This argument is not very well conceived. The Factories Act of 1934 was repealed by and re-enacted in the Factories Act, 1948 (LXIII of 1948). Section 2(m) of the Factories Act, 1948, gave a new definition of 'factory,' namely:

'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 Indian Mines Act, 1923 (IV of 1923), or a railway running shod.

11. Under the provisions of Section 8 of the General Clauses Act (X of 1897), the reference to the provisions of Factories Act, in Section 2(1) of the Payment of Wages Act (IV of 193G), has to be construed, after such repeal and re-enactment, as reference to the provision so re-enacted. The material portion of Section 8 of

the General Clauses Act (X of 1897) is set out below:

(1) Where this Act or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed, shall, unless a different intention appears, be construed as reference to the provision so re-enacted.(2) * * * *

12. It is not contended that a different intention, making the Factories Act, 1948, inapplicable to the Payment of Wages Act any where appears. As a matter of fact, the definition of 'factory' in Section 2(i) of the Payment of Wages Act was itself amended by the Amending Act LXVIII of 1957, with effect from 1 April 1958, and the amended definition now stands as:

'factory' means a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948.

13. The view that I express here was also the view expressed by Chakravartti, C.J. (Das Gupta, J., agreeing with him) in *Khuda Bux v. Manager, Caledonian Press* 1954--II L.L.J. 13 and I quote below a relevant extract from that judgment:

In my opinion, this contention is plainly unsound. The Factories Act of 1934 was repealed and re-enacted by the Act of 1948 and therefore by virtue of Section 8, General Clauses Act, references in the Workmen's Compensation Act to the Act of 1934 must be construed as references to the Act of 1948. There is nothing from which a different intention appears. Had the Workmen's Compensation Act been amended after 1948, and had the reference to the Act of 1934 yet remained, there would be reason for saying that it was the Act of 1934 which was intended to be regarded, but there has been no amendment of the Workmen's Compensation Act after the Factories Act of 1948, nor is there any other indication that the new Act is not to be read for the old, as required by Section 8, General Clauses Act.

As against these considerations, it was urged that the Factories Act of 1948 was not a repealing and amending Act, but was an Act to consolidate and amend the law relating to labour in factories, as the preamble showed and, consequently

Section 8, General Clauses Act would not apply. That argument was founded on a misconception. Section 8, General Clauses Act does not require that the later Act repealing and re-enacting an earlier Act, should be a repealing and amending Act. All that it requires is that a Central Act should repeal and re-enact a former enactment.

To that it was replied that even the repeal of the Factories Act of 1934 had now disappeared, because the repeal was effected by Section 120 of the Act of 1948, read with a table of enactments therein set out, but by the Repealing and Amending Act of 1950, the table of repealed enactments had itself been repealed. With the table gone, the operative words of Section 120 of the Act of 1948 had been left without any content and the Act had been reduced to a purely consolidating and amending Act repealing nothing. The Act of 1934 could no longer be said to have been repealed or, in any event, the Act of 1948 could no longer be said to have repealed and re-enacted it.

This contention was based, in my view, on a mistaken notion of the scope and effect of a repealing and amending Act. Such Acts have no legislative effect, but are designed for editorial revision, being intended only to excise dead matter from the statute book and to reduce its volume. Mostly, they expurgate amending Acts, because having imparted the amendment to the main Acts, these Acts have served their purpose and have no further reason for their existence. At times, inconsistencies are also removed by repealing and amending Acts. The only object of such Acts which in England, are called State Law Revision Acts, is legislative spring-cleaning and they are not intended to make any change in the law. Even so, they are guarded by saving clauses drawn with elaborate care, of which Section 3 of the Repealing and Amending Act of 1950 is itself an apt illustration.

Besides providing for other savings, that section says that the Act shall not affect, 'any principle or rule of law...notwithstanding that the same may have been...derived by, in, or from any enactment hereby repealed'.

14. I need notice here that the view of Chakravarti, C.J., in Khuda Bux case 1954--II L.L.J. 13 (supra) on the effect of Repealing and Amending Act was

referred to with approval by the Supreme Court in *Jethanand Betab v. State of Delhi* : 1960 CriLJ160 .

15. Sri Rabindra Nath Mitter tried to get rid of the difficulty created by the provisions of Section 8 of the General Clauses Act (X of 1897) by placing strong reliance on the judgment of the Privy Council in the case of *Secretary of State v. Hindusthan Co-operative Society, Ltd.* L.R. 58 I.A. 259. In that case the Privy Council no doubt observed that where the provisions of an Act had been incorporated by reference into a later Act, the repeal of the earlier Act would not effect the later Act; so too, an addition to the provisions incorporated, unless it was expressly made applicable to the later Act, should not be deemed to be incorporated into it, at all events if it was possible for the later Act, to function effectually without addition. In that case their lordships of the Privy Council were considering the propriety of reading into the Calcutta Improvement Act (V of 1911), an amendment made in the Land Acquisition Act (I of 1894), in the year 1921. Their lordships gave the following reasons why the amendment should not be so read:

But their lordships think that there are other and perhaps more cogent objections to this contention of the Secretary of State, and their lordships are not prepared to hold that the sub-section in question, which was not enacted till 1921, can be regarded as incorporated in the local Act of 1911. It was not part of the Land Acquisition Act when the local Act was passed, nor in adopting the provisions of the Land Acquisition Act is there anything to suggest that the Bengal Legislature intended to bind themselves to any future additions which might be made to that Act. It is at least conceivable that new provisions might have been added to the Land Acquisition Act which would be wholly unsuitable to the local Code. Nor, again, does Act XIX of 1921 contain any provision that the amendments enacted by it are to be treated as in any way retrospective, or are to be regarded as affecting any other enactment than the Land Acquisition Act itself. Their lordships regard the local Act as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt.

Their lordships have not been referred to anything in the general rules of construction embodied in the General Clauses Act, 1897, which supports the contention of the Secretary of State, nor to any authority which favours it. In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second: see the cases collected in Craies on Statute Law, 3rd Ed., pp. 349-350. This doctrine finds expression in a common-form section which regularly appears in the amending and repealing Acts which are passed from time to time in India. The section runs:

The repeal by this Act of any enactment shall not affect any Act...in which such enactment has been applied, incorporated or referred to. The independent existence of 'the two Acts is therefore recognized; despite the death of the parent Act, its offspring survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their lordships think that the principle involved is as applicable in India as it is in this country.

It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition.

16. The provision in Section 8 of the General Clauses Act does not operate in the matter of interpretation of statutes where a 'different intention appears.' Their lordships indicated two different intentions why the amended section of the Land Acquisition Act should not be read in the Calcutta Improvement Act, namely:

(a) that there was nothing to suggest that, in enacting the Calcutta Improvement Act, the Bengal Legislature intended to bind themselves to any future additions that might be made to the Land Acquisition Act, a Central Act, wholly unsuitable to the local Code, namely, the Calcutta Improvement Act.

(b) That the Act amending the Land Acquisition Act did not contain any provision that the amendments were to be treated in any way retrospective or were to be regarded as affecting any other enactment than the land acquisition itself.

17. It was in the aforementioned background of 'different intention' that their lordships did not find anything in the General Clauses Act (X of 1897) pointing to any other interpretation. The aforesaid decision is, therefore, of little assistance to Sri Mitter.

18. Inasmuch as definition of 'factory' as in the Factories Act (LXIII of 1948) must be read in the Payment of Wages Act (IV of 1936), and inasmuch as the factory of the petitioner firm falls within the mischief of Clause (ii) of that definition, the only argument advanced by Sri Mitter in support of this rule fails.

19. This rule is accordingly discharged, I make no order as to costs.

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