

(1991) 01 MP CK 0027

Madhya Pradesh High Court

Case No: Miscellaneous Petition No. 2483 of 1986

General Manager,
Bank Note Press

APPELLANT

Vs

Chattar Singh and
Others

RESPONDENT

Date of Decision: Jan. 8, 1991

Acts Referred:

- Factories Act, 1948 - Section 59
- Industrial Disputes Act, 1947 - Section 2, 3
- Madhya Pradesh Shops and Establishments Act, 1958 - Section 2(8), 2(9), 62, 70

Citation: (1992) ILR (MP) 728 : (1991) JLJ 241 : (1993) 3 LLJ 903 : (1991) MPJR 222 : (1991) 36 MPLJ 615 : (1991) MPLJ 615

Hon'ble Judges: K.L. Issrani, J; Faizanuddin, J

Bench: Division Bench

Advocate: Anoop Choudhary, for the Appellant; P.S. Nair, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Faizanuddin, J.

The Order passed in this petition will also govern the disposal of Misc. Petition No. 3399/86 (General Manager, Bank Note Press, Dewas v. M. Shariff and 22 Ors.) as well as Misc. Petition No. 3509 of 1986 (General Manager, Bank Note Press, Dewas v. Awatar Singh and 131 Ors.), as in all these petitions, filed by the Bank Note Press, Dewas, common questions of law and fact arise.

In all these 3 petitions under Article 226 of the Constitution, the management of the Bank Note Press, Dewas, has challenged the common order dated 21st May, 1986 passed by the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur,

allowing the applications of the respondents in 3 petitions, filed u/s 33-C(2) of the Industrial Disputes Act, 1947, granting their claim for overtime wages at double the normal rate of their wages. These 3 applications were registered by the tribunal as Application Nos. 135/85, 136/85 and 159/85.

The case of the respondents in brief was that Bank Note Press, Dewas is a Factory registered under the Factories Act, 1948, which is engaged, amongst others, in the production of the Bank notes and ink which are supplied to the Reserve Bank of India and the security ink is given to various Presses. Bank Note Press, Dewas is doing commercial business by earning profit. The Factory has various sections, such as Control, Printing, Plate making, Stores, Work Shop, Ink Factory, Dispensary, Estate and Administrative Sections, where the employees are required to work overtime to meet the rising demand of the Reserve Bank of India. It has been averred that services of every employee are complimentary and necessary for the proper and effective functioning of the Factory and its production and, therefore, there could be no valid separation of the staff in industrial and non-industrial workers for purposes of payment of overtime wages. Out of the 3 applications filed u/s 33-C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") Application No. 135/85 was by the employees of the management, who are Clerks, Stenographers, Sections officers, Deputy Accountants, Lower Division Clerks, Typists, Office Peons, Guest House Attendants, Nurses, Malis and Estate Custodian, etc. In Case No. 136/85, the employees are Store Keepers, Deputy Works Engineers, Control Inspectors and Deputy Technical Officers, etc., some of whom are getting wages more than Rs. 650/-per month. In Case No. 159/85 the employees are Inspector Control. All the employees in the 3 petitions were being paid overtime at the single rate either because they are treated to be supervisory or managerial cadre or because they are getting more than Rs.650/- per month, while others including the Head Time Keepers are paid overtime at double the rate. The respondents claim that since they are workmen as defined u/s 2(S) of the Act, they are entitled to over-time wages at double the rate u/s 59 of the Factories Act as are admissible to all other workers.

The petitioner resisted the claim of the respondents before the Tribunal by contending that Bank Note Press is discharging the sovereign functioning of the State and, therefore, it could not be construed as a Factory or industry. It was pleaded that it consists of various units like factory, administrative block, estate and dispensary which are separate units. Since most of the respondents are engaged in clerical work in administrative block, estate and dispensary unit, they are not entitled to claim overtime, u/s 59 of the Factories Act, as they are not working in Factory. The petitioner averred that overtime allowance to the respondents as non-industrial employees, is regulated under the Government of India, Ministry of Finance, orders dated 17.5.1975. It was further averred that the Tribunal has no jurisdiction to decide the applications u/s 33-C(2) of the Act because Bank Note Press is not an Industry within the meaning of Section 2(j) of the Act.

The Tribunal after recording the parties' evidence held that the applicants of the 3 cases, the respondents in these 3 petitions, are the workmen and the place of their working is a Factory within the meaning of Factories Act and they are also workmen within the meaning of Section 2(s) of the Industrial Disputes Act. The Tribunal also took the view that this Court in *General Manager, Security Paper Mills v. H.S. Namdeo* 1979 J LJ 559 : 1979 MPLJ 451, *Security Paper Mills, Hoshangabad* was held to be an Industry and as the Bank Note Press, Dewas is a sister-concern and, therefore, it is also Industry. On the aforesaid conclusions, the Tribunal by the impugned order dated 21.5.1986 allowed the applications u/s 33-C(2) of the Act and directed the petitioner to pay overtime at double the rate within 3 months failing which the petitioner would be liable to pay interest at the rate of 9 percent from the date of the order, against which these petitions have been filed.

Learned counsel for the petitioner first submitted that Bank Note Press, Dewas is not an Industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, nor the persons employed in the Bank Note Press are workmen within the meaning of Section 2(s) of the said Act, and therefore, the provisions of Industrial Disputes Act, 1947 are not attracted and hence the applications of the respondents u/s 33-C(2) were not maintainable. In this connection, it may be pointed out that it has not been disputed before us that the Central Government in pursuance of the provisions contained in Sub-clause (vi) of Clause (n) of Section 2 of the Act have declared the services in the Bank Note Press to be public utility service for the purposes of the said Act. It may also be pointed that in the First Schedule of the Act, the Industries which may be declared to be public utility service under Sub-clause (vi) of Clause (n) of Section 2 of the Act, have been mentioned at item Nos. 11 and 12 of the First Schedule "India Government Mints" and "India Security Press", respectively have been specified as Industries which may be declared as Public Utility Service. Thus the declaration of the Central Government regarding the service in the Bank Note Press, Dewas to be a public utility service for the purposes of Industrial Disputes Act coupled with the specification of "India Government Mints" and "India Security Press" in the First Schedule of the Industrial Disputes Act as public utility service for the purposes of the said Act, conclusively established that the Bank Note Press, Dewas is an Industry and the persons working in it are the workmen under the Act. In this view of the matter we are also supported by a Division Bench decision of this Court in the case of *Employees in relation to the Management of the Bank Note Press, Dewas v. C.G.I.T.-cum Labour Court, Jabalpur*, M.P. No. 80 of 1978 decided on 6.5.1978.

Learned Counsel for the petitioner next contended that the Bank Note Press, Dewas prints notes which is inalienable sovereign function and, therefore, it cannot be construed as an "Industry" so as to attract the provisions of the Industrial Disputes Act, 1947. In our considered opinion, there is no substance in this submission for the reason that it is the nature of the activity which is the determining factor and if on the application of that test the State's inalienable function also falls within the

definition of the "Industry" it will have to be construed as Industry irrespective of the fact that the said undertaking by the Government was in discharge of the sovereign functions of the State or otherwise, because the consideration as to who conducts an activity which falls within the definition of the "Industry" is irrelevant. In this connection a reference to the D.B. decision of this Court in *G.M. Security Paper Mills, Hoshangabad v. Harishanker* 1979 MPLJ 451, may be made with advantage wherein it has been observed that the definition of "Industry" as given in Section 2(j) of the Act does not expressly exclude the Government undertaking established in exercise of the sovereign functions. After construing the provisions of Sub-clause (vi) of Section 2(n) of the Act, the Division Bench took the view that even assuming that these Industries are established by the Central Government in the exercise of its sovereign function, yet it is clear that the intention of the Act was to include them within the definition of Industry; otherwise they would not have been mentioned in the First Schedule. It has been further held that by necessary implication, therefore, Defence Establishments, India Government Mints and India Security Press, are "Industries" within the meaning of the Act.

It was then urged that the persons working in the Bank Note press, Dewas were not the "workmen" within the meaning of Section 2(1) of the Factories Act and unless they are excluded by the Rules framed u/s 64 of the Factories Act which take away certain employees out of the purview of "workmen", benefit of Section 59 of the Factories Act for overtime wages at double the rate cannot be claimed by the respondents. It was submitted that as Rule 97 of the M.P. Factories Rules, 1962 framed u/s 64 of the Factories Act carve out an exception to the payment of overtime wages at the rate of twice the ordinary rate of wages for the employees specified in the Schedule. The benefit of the provisions of Section 59 of the Factories Act, would not be available to the respondents as they belong to the employees specified in the Schedule and, therefore, they are not entitled to claim the wages at double the rate.

As against this, learned counsel for the respondents invited our attention to the provisions of Section 62 of the M.P. Shops and Establishments Act, 1958 and submitted that the aforesaid arguments advanced by the learned counsel for the petitioner cannot be accepted in view of the decision of their Lordships of the Supreme Court in the case [Union of India \(UOI\) and Another Vs. G.M. Kokil and Others](#), where similar question arose for consideration in relation to Section 70 of the Bombay Shops and Establishments Act, 1948. However, the learned counsel for the petitioner submitted that Section 70 of the Bombay Shops and Establishments Act is not in pan materia to Section 62 of the M.P. Shops and Establishments Act and, therefore, aforesaid decision of the Supreme Court is not of any assistance in the instant case.

In view of the rival contentions, it would be appropriate to refer to the relevant provisions of the Factories Act as well as Section 62 of the M.P. Shops and

Establishments Act and Rule 97 of the M.P. Factories rules and Section 70 of the Bombay Shops and Establishments Act and Rule 100, framed under Bombay Act. We shall first refer to the material portions of Sections 59 and 64 of the Factories Act, 1948, which runs as under:

"59. Extra wages for over time- (1) Where a worker works in a factory for more than nine hours in any day or for more than fortyeight hours in any week, he shall in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages". "64. Power to make exempting rules- (1) The State Government may make rules defining the persons who hold positions of supervision or management or are employed in a confidential position in a factory or empowering the Chief Inspector to declare any person, other than a person defined by such rules, as a person holding position of supervision or management or employed in a confidential position in factory if, in the opinion of the Chief Inspector, such person holds such position or is so employed, and the provisions of this Chapter, other than the provisions of Clause (b) of Sub-section (1) of Section 66 and of the proviso to that Sub-section, shall not apply to any person so defined or declared:

Provided that any person so defined or declared shall, where the ordinary rate of wages of such person does not exceed rupees seven hundred and fifty per month, be entitled to extra wages in respect of overtime work u/s 59."

9-A. Section 70 of the Bombay Shops and Establishments Act, 1948 and Section 62 of the M.P. Shops and Establishments Act, 1958 run as under:

Section 70 of the Bombay Shops and Establishments Act

"70. Persons employed in Factory to be governed by Factories Act and not by this Act. Nothing in this Act shall be deemed to apply to a factory and the provisions of the Factories Act, 1948 shall, notwithstanding anything contained in that Act, apply to all persons employed in and in connection with a factory:

Provided that, where any shop or commercial establishment situated within the precincts of a factory is not connected with the manufacturing process of the factory, the provisions of this Act shall apply to it:

Provided further that, the State Government may, by Notification in the Official Gazette apply all or any of the provisions of the Factories Act, 1948 to any shop or commercial establishment situate within the precincts of a factory and on the application of that Act to such shop or commercial establishment the provisions of this Act shall cease to apply to it."

9-B. Relevant portions of Rule 100 of the Bombay Factories Rules, framed u/s 64 of the Factories Act and Rule 97 of the M.P. Rule 100 of the Bombay Rules.

"Persons defined to hold positions of supervision or management or confidential position. The following persons shall be deemed to hold position of supervision or

management or to be employed in a confidential position in a factory-(a) All persons specified in the Schedule annexed hereto.

(b) Any other person who, in the opinion of the Chief Inspector, holds a position of supervision or, management or is employed in a confidential position.

Schedule-

List of persons defined to hold positions of supervision or management in factories:

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Manager

Assistant Manager Departmental Heads and Assistants.

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Head Store Keepers and Assistant Technical Experts."

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Section 62 of the M.P. Shops and Establishments Act

"62. Persons employed in Factory to be governed by Factories Act and not by this Act. Nothing in this Act shall be deemed to apply to any person employed in an establishment situated in or within the precincts of a factory and the provisions of the Factories Act, 1948 (LXIII of 1948) shall, notwithstanding anything in the said Act, apply to such person."

Factories Rules, 1962 framed u/s 64 of the Factories Act read as under: -

Rule 97 of the M.P. Rules.

"Persons defined to hold position of supervision or management or confidential capacity. -

Supervision or Management.

(i) Manager and Assistant Manager,

(ii) Heads of Department and their Assistant,

(iii) Foreman

(iv) Engineers and Assistant Engineers but not Boiler Attendants

(v) Store Keeper and their Assistants,

(vi) Technical Experts,

(vii) Labour Welfare Officers.

(viii) Inspectors,

(ix) Chargeman.

(x) Workshop Overseers. Confidential Capacity

(xi) Official Assistants.

(xii) Clerks,

(xiii) Time Keepers,

(xiv) Watchman,

(xv) Messengers,

(xvi) Fire Brigademan:

Provided that Clerks engaged in weighing, measuring, checking and entering goods etc. In the Departments of factory whose work must necessarily be carried out in proximity to the manufacturing process shall not be considered to be employed in confidential capacity, (b) Any other person who in opinion of the Chief inspector holds a position of supervision or management or is employed in a confidential capacity."''

While construing the provisions of Section 70 of the Bombay Shops and Establishments Act in the case of Union of India v. G.M. Kokil (supra) their Lordships of the Supreme Court took the view that the validity of the argument that none of the respondents was a worker u/s 2(1) of the Factories Act, and, therefore, they were not entitled to the benefit of Section 59 of that Act read with Section 70 of the Bombay Shops and Establishments Act, 1948, even on the assumption that respondents were entitled to claim the benefit of Section 59, of that Act read with Section 70 of the Bombay Shops and Establishments Act, 1948 were entitled to claim the benefit of Section 59, depends upon the proper construction of Section 70 of the Bombay Shops and Establishment Act, 1948 (in our case Section 62 of the M.P. Shops and Establishments Act, 1958).

In the aforesaid context the Supreme Court while construing Section 70 of the Bombay Shops and Establishments Act took the view that Section 70 of the Bombay Act was enacted in two parts inasmuch as the first part states that if there be a factory the Shops and Establishments Act will not apply and second part states that to such a factory the provisions of the Factories Act shall, notwithstanding anything contained in that Act, apply to all persons employed in or in connection with a factory. According to the Supreme Court, the aforesaid expression in Section 70 of the Bombay Act brought within its sweep all persons employed in such Factory by applying the provisions of Factories Act, irrespective of the fact that they were employed as workers or otherwise.

In the case of Union of India v. G.M. Kokil (supra), the Supreme Court held in paragraph 10 of the report as under:

"Section 70, so far as is relevant, says the provisions of the Factories Act shall, notwithstanding anything contained in that Act apply to all persons employed in and in connection with a factory." It is well known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. Thus the non obstante clause in Section 70, namely, "notwithstanding anything in the Act" must mean notwithstanding anything to the contrary contained in that Act and as such it must refer to the exempting provisions which would be contrary to the general applicability of the Act. In other words, as all the relevant provisions of the Act are made applicable to a factory notwithstanding anything to the contrary contained in it, it must have the effect of excluding the operation of the exemption provisions. Just as because of the non obstante clause the Act is applicable even to employees in the factory who might not be "workers" u/s 2(1), the same non obstante clause will keep away the applicability of exemption provisions qua all those working in the factory. The Labour Court, in our view, was, therefore, right in taking the view that because of the non obstante clause Section 64 read with Rule 100 itself would not apply to the respondents and they would be entitled to claim overtime wages u/s 59 of that Act read with Section 70 of the Bombay Shops and Establishments Act, 1948."

As seen above, the provisions of section 62 of the M.P. Shops and Establishments Act are in pari materia to Section 70 of the Bombay Shops and Establishments Act and by virtue of non obstante clause in Section 62 of the M.P. Act, the provisions of Section 59 of the Factories Act are fully attracted in the present case also as was found by their Lordships of the Supreme Court in relation to Section 70 of the Bombay Act, in the case of Union of India v, G.M. Kokil (supra), and that being so, there is no reason why the benefit of Section 59 of the Factories Act which relates to the payment of wages at the rate of twice the ordinary rate of wages to the workers in the factory who work for more than 48 hours in a week, should not be extended. The same view was reiterated by a Division Bench of this Court in Bank Note Press, Dewas v. Union of India, Letters Patent Appeal No. 59 of 1985, decided on 11.8.1987, wherein the points in controversy are dealt with in detail. It is, therefore, not necessary for us to dwell on the point much in detail as the point in controversy is almost covered by the Supreme Court decision in the case of Union of India v. G.M. Kokil(supra) as well as BankNotePress, Dewas v. Union of India (supra).

Learned counsel for the petitioner then contended that by virtue of Section 3 of the Madhya Pradesh Shops and Establishments Act, 1958 the provisions of Section 62 of the said Act could not be applied in the case of Bank Note Press and as the Bank Note Press was an establishment run by Union of India or the State Government, the provisions of Madhya Pradesh Shops and Establishments Act were not attracted. In this connection it may be pointed out that admittedly the Bank Note Press, Dewas is a Factory registered under the Factories Act. As discussed above, the entire Madhya

pradesh Shops and Establishments Act, 1958 applies to all establishments. The word "establishment" has been defined in Section 2(8) of that Act; but does not include a factory, as "factory" is separately defined in Section 2(9) of that Act. A similar question as posed by the learned counsel for the petitioner arose for consideration of the Supreme Court in the case of [Shri B.P. Hira, Works Manager, Central Railway, Parel, Bombay etc. Vs. Shri C.M. Pradhan etc.,](#) with reference to Section 4 of the Bombay Shops and Establishments Act which is almost similar in terms of Section 3 of M.P. Shops and Establishments Act Section 70 of the Bombay Shops and Establishments Act which is similar to Section 62 of the Madhya Pradesh Shops and Establishments Act. The Supreme Court took the view that Section 4 of the Bombay Act has no application to factories but even if Section 4 is assumed to be applicable to Factory it would not materially affect the application of Section 70 (in our case Section 62 of the M.P. Act). It is further observed that the plain object underlying Section 70 and its context emphatically point out that it is intended to operate independently of the other provisions of the Act and in that sense it stands apart from them. It is this aspect of the matter which is clarified by the Legislature by laying down in Section 70 that nothing in the Act shall be deemed to apply to any other persons employed in the factory. In view of the aforesaid decision it cannot be said that application of Section 62 of the M.P. Shops and Establishments Act is curtailed or limited by Section 3 of that Act. The argument has, therefore, to be rejected.

Learned counsel for the petitioner lastly contended that the respondents are drawing more than Rs.650/- per month and their duties are different from the industrial workers who are directly connected with the production of Bank Notes and inks. It was urged that duties of the respondents were wholly ministerial in nature like any other office staff working in other Government Departments and, therefore, they are not entitled to overtime allowance at the same rate as is admissible to the workers engaged in production of Bank Notes and inks. It was submitted that the Tribunal did not properly appreciate the evidence on record and thus arrived at a wrong conclusion that the respondents are workmen and the place of their working is within the factory premises. After perusal of the evidence discussed by the Tribunal in paragraphs 6 to 12 and the finding thereon recorded by the Tribunal we find that there is absolutely no substance" in the submission. A perusal of the evidence goes to show that the conclusions reached by the Tribunal cannot be said to be perverse and that being so, it is not open for us to consider the propriety for the correctness of the said conclusions. Even otherwise, the said findings are not of much consequence in view of the Supreme Court decision that the provisions of Section 59 of the Factories Act with regard to the payment of overtime wages at double the rate apply to all the workers.

In the light of the aforesaid discussion, the petitions fail and are hereby dismissed with costs. Counsel's fee Rs. 1000/- in each petition.