

(1956) 10 MP CK 0025

Madhya Pradesh High Court (Gwalior Bench)

Case No: Civil Miscellaneous Application No. 6 of 1954

Hindustan Journals Ltd.
Proprietor 'Nay Prabhat'

APPELLANT

Vs

Dinesh Awasthi Ramswaroop
Awasthi and Another

RESPONDENT

Date of Decision: Oct. 1, 1956

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Factories Act, 1934 - Section 1(4)
- Factories Act, 1948 - Section 2
- General Clauses Act, 1897 - Section 8
- Payment of Wages Act, 1936 - Section 1(4), 1(5), 15(1), 15(2)

Citation: AIR 1957 MP 125

Hon'ble Judges: Dixit, J; A.H. Khan, J

Bench: Division Bench

Advocate: Motilal Gupta, for the Appellant; Inamdar Homidaji, Dey and J.P. Gupta, for the Respondent

Judgement

Dixit, J.

By this application under Articles 226 and 227 of the Constitution of India the Petitioner prays for the issue of a suitable direction to prohibit: the authority appointed u/s 15(1) of the Payment of Wages Act, 1936 from entertaining a claim of the non-Applicant Dinesh Awasthi u/s 15(2) of the Act.

2. The matter arises thus. On 16th November 1953 the opponent Dinesh Awasthi presented an application before the authority appointed, under the Payment of Wages Act, 1936, stating that he was employed by the Hindustan Journals Ltd., first as a reporter and then as a sub-editor on a salary of Rs. 100/- per month of "Nav Prabhat" a daily Hindi newspaper published in Gwalior; that his services were

terminated on 14th October 1953; and that the Petitioner had unlawfully made a deduction of Rs. 20/- from his monthly salary, withheld the payment of his salary from 31st August 1953 to 14th October 1953 and had refused to pay him one month's pay in lieu of the leave due to him.

Dinesh Awasthi prayed for a direction" for the payment to him of Rs 310/- on account of the salary and illegal deduction. He also claimed an amount of Rs. 3000/- as compensation. In reply the Petitioner raised several objection claiming the claim. One of the objections was that the authority had no jurisdiction to entertain Awasthi's claim inasmuch as on account of, its nature, it did not fall within the purview of, the Payment of Wages Act, 1936. The objection in Hindi ran as follows:

गुणधर्माधिकार के अभाव में न्यायाधीशों को न्याय प्रदान करने का अधिकार नहीं है। गुणधर्माधिकार के अभाव में न्यायाधीशों को न्याय प्रदान करने का अधिकार नहीं है। गुणधर्माधिकार के अभाव में न्यायाधीशों को न्याय प्रदान करने का अधिकार नहीं है।

On 6th January 1954 the non-Applicant Dinesh Awasthi made an application praying inter alia that the Petitioner be called upon to elucidate as to what he meant by "the nature of claim" when he said that on account of it the Court had no "Jurisdiction. This application was, filed by the authority without any order thereon. The authority then framed an issue on the question of jurisdiction to the following effect:

whether the nature of the claim is such that it falls under the Payment of Wages Act and whether the Court has Jurisdiction to hear the claim.

The wording of the issue in Hindi was:

न्यायाधीशों को न्याय प्रदान करने का अधिकार नहीं है। न्यायाधीशों को न्याय प्रदान करने का अधिकार नहीं है। न्यायाधीशों को न्याय प्रदान करने का अधिकार नहीं है।

The evidence which the parties led on this issue had however, no bearing whatsoever on the question of the nature of claim. The evidence related question whether the Hindusthan Journals Ltd. and the Modern Printing Press where the new paper Nav Prabhat was being printed were different concerns or one and the same whether any manufacturing process was carried on in the printing and publication of the newspaper and whether the number of persons employed in Hindustan Journals Ltd., exceeded twenty. On that evidence the authority under the Payment of Wages Act expressed its conclusion in the following words:

I therefore hold that work that is carried on in Nav-Prabhat office comes within the meaning of the manufacturing process. The three important ingredients of a factory being thus pre-sent in New-Prabhat; it is held that the office of the New-Prabhat comes within the meaning of factory as defined in the Factories Act.

Accordingly it held that it was competent to entertain and hear the claim made by Dinesh Awasthi u/s 15(2).

3. The question that arises in this petition is whether the opponent Dinesh Awasthi is a person to whom the Payment of Wages Act, 1936 can be applied. The material

provision is Section 1(4) of the act which provides that the Act applies in the first instance to the payment of wages to persons employed in any factory. We are not concerned here with the other persons spoken of in Section 1(4) or with Sub-section 5. According to Section 2 "factory means a factory as defined in clause (j) of Section 1(4) the Factories Act, 1934.

The Factories Act, 1934 was repealed and reenacted by the Factories Act of 1948. The references in the Payment of Wages Act, 1936 to the Factories Act of 1934 must, by virtue of Section 8 of the General Clauses Act, 1897, be read as references to the Factories Act of 1948. See [Khuda Bux Vs. Manager, Caledonian Press](#). There is no dispute on this point. Section 2(m) of the Factories Act, 1948 defines "factory" thus;

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) Where on 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 shed.

Section 2(K) of the same Act gives the definition of manufacturing process. According to that definition "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....

(iv) printing by letterpress, lithography, photogravure or other similar work or book-binding Which is carried on by way of trade or for purposes of gain, or incidentally to another business so carried on; or

4. It will be seen from these definitions that in order to apply the Act to a person under the first part of Section 1(4), it is essential that the person must be one employed in any premises including the precincts thereof, whereon ten or more persons are working or were working in any part of which a manufacturing process is being carried on with the aid of power. Or he must be employed in any premises. Whereon twenty or more persons are working or were working and in which a manufacturing process is being carried on without the aid of power. It is not necessary that the person himself should be working in the manufacturing process. All that is necessary is that he should be employed in the premises in which the requisite number of persons are employed in a manufacturing process.

5. It follows from the above definitions that it must be a question of fact in each case whether or not a person applying u/s 15(2) of the Payment of wages Act is one employed in any factory and the facts needing investigation would be (1) whether he is employed; (2) whether his employment is in any premises including the precincts thereof whereon the prescribed number of workers were working in the prescribed period; (3) and whether in any part of those premises manufacturing process was being carried on.

An objection that the Payment of Wages authority has no jurisdiction to entertain a claim by a person because he does not come within the first part of Section 1(4) of the Act may thus be founded on the want of any or all of the above essentials. The party raising the objection as to Jurisdiction must, therefore, specify clearly as to how the claimant is not a person employed in any factory. In the instant case the Petitioner in his reply did not in express words take the objection that the opponent Dinesh Awasthi was not a person employed in any factory.

The objection was that the opponent's claim by its nature was outside the scope of the Payment of Wages Act. The issue framed was also as regards this specific objection. It is, therefore, not clear how the parties were permitted to lead evidence altogether irrelevant to the issue actually framed on the statements of the parties. There is nothing on the record to show that after the framing of the issue, the non-Petitioner gave up the objection he had raised and the parties agreed that the objection as to jurisdiction rested on the question whether the opponent Dinesh Awasthi was a person employed in a factory and that objection needed in-visitation only so far as to whether the Hindustan Journals Ltd., and the Modern Printing Press were one concern, whether any manufacturing, process was being carried on therein and whether the Hindustan Journals Ltd., employed the prescribed number of persons. Be that as it may, the result of this unsatisfactory procedure followed by the authority in the investigation of the question of Jurisdiction has been that the attention of the parties was not focused on the essentials they were required to prove or rebut with regard to the fact whether the opponent Dinesh Awasthi was, a person employed in a factory and the authority has also not given any precise and definite finding on the material facts.

6. On the evidence on record the authority under the Payment of Wage Act first held that "the Gwalior office of the Nav-Prabhat is located In Indergang in a building known as Shitloe's Bada. In the same building adjacent to the Nav-Prabhat Office is located the "Modern Printing Press" named by the Gwalior Printers and publishers Ltd. The entire manuscript of the Nav-Prabhat paper is compiled in the Nav-Prabhat office and such a manuscript is got printed daily from the Modern Printing, Press from where thousands of copies are Printed and published for distribution amongst the-reading public.

It then made the somewhat inconsistent observation that "the press and the Nav-Prabhat are not two separate water-tight compartments. Evidence shows that

they are mixed up with each other in respect of their management, control and the realisation and disbursement of money". This is all what the authority had to say on the point whether the Hindusthan Journals Ltd. and the Modern Printing Press where the newspaper Nav-Prabhat was printed were one establishment or separate establishments. The authority did not determine in positive and definite terms whether the two concerns were so closely related as to form one entire establishment so as to make a person employed by the Hindustan Journals Ltd., as one employed, by the press itself.

If the office of the Hindustan Journals where the opponent Dinesh Awasthi was working as a Sub-editor formed part of the establishment where the newspaper Nav-Prabhat was printed, then of course there could no doubt that Dinesh Awasthi was employed in the premises where the manufacturing process was carried on. The authority did not consider this aspect of the matter at all and overlooked altogether the fact that u/s 2(k) Factories Act, 1948 manufacturing process has been expressly defined to mean inter alia printing by letterpress.

The authority founded its conclusion that the opponent Awasthi was a person employed in a factory mainly on the fact that a teleprompter run by electric power belonging to Nav Prabhat was kept in a portion of the building where the Modern Printing Press was located and that the sub-editors and other persons belonging to Nav-Prabhat sat in the press during night hours.", attended to the teleprompter and also did proof-reading. On analysis it will be found that this view proceeds on the basis that the Hindustan Journals Ltd., who own the paper "Nav- Prabhat" and the Modern, Printing Press are altogether different concerns: that the opponent Awasthi though employed by the, Hindustan Journals Ltd., in whose premises by the manufacturing process was carried on yet became employed in the adjoining premises where the Printing Press was located by reason of the fact that a teleprompter belonging to Nav-Prabhat was placed in the Press and the sub-editors and reporters of the paper sat in the Press, took down messages from the very teleprinter and did proof-reading

In taking this view the authority attached all weight to the proximity of the premises of the Hindustan Journals Ltd. and the Modern Printing Press, overlooking altogether the significance of the word "employed" in the expression "employed in any factory. That expression to my mind, means employed in a factory by the owner of the factory.

A person employed by a concern which is not a factory, cannot clearly become one "employed in any; factory" by the mere placing certain Articles belonging to the non-factory concern in a factory or by the presence of that person in a factory.

Any meaning making a concern which is not in fact a factory, "a factory" by its proximity to a factory would be utterly inconsistent with the object of the Payment of Wages Act which is to regulate the payment of wages to certain classes of

persons employed in factories and in industrial establishments, If the test of the proximity of premises followed by the authority is accepted as the true test for constituting a person as one employed in a factory then it is easy to see that in a factory if the administrative establishment is located in one building and the actual manufacturing process is carried on in another building situated at a considerable distance, then persons on the administrative establishment would cease to be persons employed in the factory even though the two buildings are a part of one and the same establishment.

On the same test it would also follow that a newspaper publishing concern would be a factory even if it does not own a Press of its own, gets the manuscript ready by its staff in its own office and then gets it printed by an independent and. adjacent Press on payment of the necessary charges I entertain no doubt that such an inclusion or exclusion of premises as factories is not intended by the meaning of the word "factory" and of the expression "employed in any factory". In my judgment on the true construction of the expression "persons employed in any factory" a person cannot be said to be one answering the description unless he is employed by the owner of the factory as defined in Section 2(m) of the Factories Act, 1948.

7. In support of its conclusion, the authority also observed in the alternative that "the teleprompter machine is a part and parcel of the Nav Prabhat and although it is kept in the press it makes no difference. This machine is run by electric power and sheets of News reels are constantly manufactured out of this machine. These news reels are taken out of the machine and the news printed therein is given new heading, it is mould-ed into a new form, and it takes a different shape. In this way the manufacturing process is carried on in Nav-Prabhat with the aid of power.

In this observation the authority regarded the location of the teleprompter as immaterial & thought that the receipt of messages on a teleprompter and editing of the news items constituted a manufacturing process. I am unable to accept this view. I fail to see how "news reels are constantly manufactured by the teleprompter machine, which is merely a telegraphic Instrument for conveying messages. In printed form. Surely the machine does not manufacture any news-paper reel and the news printed on that reel cannot be said to be "manufactured" by the machine.

The authority has made an attempt to, show how the news received by the news-paper from various sources is adapted, altered and made attractive and how this process is a manufacturing process u/s 2(k)(i) of the Factories Act, 1948. In all its discussion on the point the authority lost, sight of the essential fact that a "news" is not an article or substance or com-modify to the making, altering, repairing, ornamenting, finishing or adapting of which Section 2(k)(i) has a reference. I find it" extremely difficult to comprehend how in the editing itself of any "news" any manufacturing process is carried on

8. From what has been stated above, it is plain that the finding of the authority on the question of Jurisdiction is vitiated by an altogether wrong approach to the question, by its omission to consider and investigate the Material facts and by the irregular procedure followed in the investigation of the question. I am therefore, of the opinion that this petition must be accepted and in the exercise of this Court's power and Article 227 of the constitution, the decision of the authority on the question of jurisdiction should be set aside and, it should be directed to call upon the Petitioner to (sic) his plea on the question of the lack of Jurisdiction and then to investigate the question after framing proper issues.

As the matter has been pending before the authority for a very long time it would also be proper to direct that the authority should determine" the question of Jurisdiction along with the other question raised in the case and dispose of the case finally by one order. In the circumstances of the case I would leave the parties to bear their own costs.

A.H. Khan J.

9. I agree.