

Indian Oil Petronas Pvt. Ltd. Vs Regional Labour Commissioner (Central) and Others

Court: Calcutta High Court

Date of Decision: Sept. 27, 2006

Acts Referred: Essential Commodities Act, 1955 â€” Section 3

Industrial Disputes Act, 1947 â€” Section 10(1A), 25G

Oilfields (Regulation and Development) Act, 1948 â€” Section 3

Payment of Gratuity Act, 1972 â€” Section 1(3), 2

Citation: (2007) 1 CALLT 572 : (2007) 1 CHN 155 : (2007) 113 FLR 1085

Hon'ble Judges: Tapan Kumar Dutt, J

Bench: Single Bench

Advocate: A. Chowdhury, A. Ghosh, S. Sil and R. Talukdar, for the Appellant; U.P. Mukherjee and D. Pal, for the Respondent

Judgement

Tapan Kumar Dutt, J.

Heard the learned Advocates for the parties.

2. The writ petitioner's case is that the writ petitioner is a private limited company incorporated under the Companies Act, 1956 and the

shareholders of the writ petitioner are M/s. Indian Oil Corporation Ltd., a Government company, and M/s. Petroleum Nasional Berhad, Malaysia,

a Malaysian Government owned company and that such shareholders hold equity shares in the petitioner-company in equal proportion. The

corporate office of the petitioner which is also its Head Office, is at Calcutta and the said corporate office does not have any branch in West

Bengal or in any other State and the number of persons employed at the said corporate office has always been less than 10. The said corporate

office/head office is registered as an establishment under the provisions of West Bengal Shops and Establishments Act, 1963.

3. Notice dated 04.10.2004 was issued by the Enforcement Officer (Central), Calcutta-II against the petitioner alleging that certain irregularities

were noted during an inspection of the petitioner's establishment at Kolkata under the Payment of Gratuity Act, 1972 and payment of Gratuity

(Central) Rules, 1972 and the petitioner was asked to rectify the irregularities and report compliance and the petitioner was also asked to show

cause to the Regional Labour Commissioner (Central) at Kolkata as to why legal action should not be taken against the petitioner.

4. That challenging such notice dated 04.10.2004 the petitioner came up to this Hon"ble Court alleging that the said notice dated 04.10.2004 was

not issued by the competent authority under the Payment of Gratuity Act, 1972. The petitioner's stand was that the ""State Government"" is the

appropriate authority insofar as the implementation of the Payment of Gratuity Act is concerned. It appears that by order dated 05.11.2004 an

Hon"ble Single Judge of this Court was pleased to observe that since it was a question of jurisdiction it should be initially decided by the

respondent No. 3 (in the earlier writ petition) upon hearing the petitioner and a reasoned decision should be communicated to the petitioner.

Thereafter, by an order dated 01.03.2005 the respondent No. 1 has held that the Central Government is the appropriate Government under the

said Act of 1972. Such order dated 01.03.2005 has been challenged in the present writ petition.

5. The respondent No. 1, it appears from the said order dated 01.03.2005, came to the conclusion that the Central Government is the appropriate

Government. The respondent No. 1 factually found that the company has its registered office at New Delhi, corporate office at Kolkata and also

one factory at Haldia. The said respondent observed that the term ""establishment"" has not been defined in the said Act of 1972 and as such he

relied upon the Webster's Dictionary where, according to him, it has been defined as a place where a person is settled for residence or for

transacting business and in the instant case the term ""establishment"" would mean the place for transacting any business, trade or profession or work

connected with or incidental or ancillary thereto of the petitioner. The said respondent also considered Section 1(3)(b) of the said Act of 1972.

The said respondent observed that the appropriate Government in relation to an establishment having branches in more than one State is the

Central Government and that in the writ petitioner's case the petitioner is one legal entity and it has three locations-one in Delhi and the other two

in West Bengal and for the purpose of calculation of the total strength of the establishment, employees' strength at all the three locations comes to

38. According to the said respondent ""Since the company is having different establishment in two different States i.e. (more than one State) it has

to be treated as an establishment having branches in more than one State and automatically, it falls within the jurisdiction of the Central Government

within the meaning of Section 2(a)(i)(b) of the Act, 1972"".

6. The learned Counsel for the petitioner submitted that the petitioner's individual establishment has to be considered and not the petitioner's

undertaking/company as a whole and according to the said learned Counsel, the corporate office/head office of the petitioner is a separate

establishment and that the State Government is the appropriate Government in respect of the petitioner's corporate office/head office. Section 1(3)

(b) of the said Act was referred to by the said learned Counsel and it was emphasised that the said Act applies to ""establishment"". According to

the said learned Counsel the respondent No. 1 correctly relied upon the definition ""establishment"" in the Webster's Dictionary but the said learned

Counsel submitted that the essence of an establishment is a place and that each separate place is a separate establishment. The said learned

Counsel relied upon a decision reported in 1962 (3) Supl. SCR. 589, Management of Indian Cable Co., Ltd., Calcutta v. Its Workmen. For the

purpose of ascertaining the meaning of the expression ""Industrial Establishment"" the said learned Advocate also relied upon Section 10(1A) and

Section 25G of the Industrial Disputes Act and submitted that this provision is based on the principle that industrial establishments of a concern

situated in different States are distinct establishments.

7. The learned Counsel for the petitioner submitted that the petitioner's corporate office/head office is at Calcutta and the State Government is the

appropriate Government. He referred to Section 2 of the said Act of 1972 where the term ""appropriate Government"" has been defined. The said

learned Counsel submitted that Section 2(a)(i)(b) applies when an establishment has branches in more than one State but in the petitioner's case

there are three different establishments at different places - one establishment is at New Delhi, one is at Calcutta and the other is at Haldia. So far

as Haldia and Calcutta establishments are concerned they are within the same State. The petitioner's learned Counsel submitted that it cannot be

said that any one establishment, in the petitioner's case, has branches in more than one State. The petitioner's learned Counsel submitted that if the

Central Government is to be considered to be the appropriate Government then either the registered office of the company must be treated to be a

branch of one of the establishments in West Bengal or any of the two or both the establishments in the State of West Bengal will have to be treated

as a branch or branches of the registered office at New Delhi. The said learned Advocate relied upon the meaning of the word "branch" as given

in the Oxford English Dictionary and submitted that it has been described to mean a local office of business, subordinate to the main or head office,

as the ""branch"" of a bank or other establishment. The said learned Counsel submitted that the registered office cannot be subordinate to any other

establishment but is an establishment independent of others and the function of such registered office is to discharge certain statutory functions

under the Companies Act, 1956 and the functions by the said registered office are not the business function. The said learned Advocate submitted

that the respondent-authority erroneously took all the establishments of the petitioner to form one establishment. According to the said learned

Advocate if the petitioner's corporate office/head office forms a separate establishment then in that event the said Act does not apply as the

number of persons employed in the said corporate office were and are less than 10.

8. The learned Counsel to the respondent authorities argued that the head office/corporate office at Calcutta and the Haldia unit are not separate

legal entities and the employees working in three different locations are on transferable basis and all the three locations belong to the petitioner-

company and for the purpose of calculation of the total strength of the establishment the employees' strength at all the three locations comes to 38.

According to the said learned Counsel the petitioner has to be treated as one establishment having branches in more than one State and therefore

the Central Government is the appropriate Government. The said learned Advocate also referred to the memorandum of association and submitted

that the main object for which the company was established has been set out in Clause (A) of the said Memorandum of Association. The said

Clause (A) is quoted as hereunder:

(A) The main objects to be pursued by the company on its incorporation are:

1. To construct, own, operate and maintain liquid petroleum gas (LPG), refrigerated, pressurized storage facilities and associated facilities.

2. To import, store, market, distribute and export LPG in bulk and packed forms and to set up or take on lease hire LPG Bottling Plants.

2A. To carry on the business of blending, storage, handling, treatment, carriage, transport, dispatch, supply, market, research, advise, consultancy,

service providers, brokers and agents, engineering and civil designers, contractors, sub-contractors, producers, suppliers, marketers, dealers of

gas and gas products including liquid petroleum gas (LPG) propane, butane or any other derivatives or compounds oil products, petroleum

products, fuels, chemicals, liquids of all types and kinds and the compounds, Auto LPG, derivatives, mixtures, preparations and products thereof,

and for this purpose to establish, construct, erect, lay, assemble, purchase, acquire by way of lease or ownership or otherwise operate, manage

and maintain bottling plants, retail outlets, transportation and supply facilities, pipelines, facilities, structures, works and conveniences of every type

and description.

9. The said learned Advocate submitted that the petitioner's activities come under the category of "oilfields" as defined u/s 3 of the Oilfields

(Regulation and Development) Act, 1948 where oilfield has been defined in Section 3(e) as ""oilfield" means any area where any operation for the

purpose of obtaining natural gas and petroleum, crude oil, refined oil, partially refined oil and any of the products of petroleum in a liquid or solid

state, is to be or is being carried on." Thus, according to the said learned Advocate the appropriate Government as defined in Section 2(a) of the

said Act in the instant case is the Central Government.

10. After having the learned Advocates for the respective parties it appears to this Court that two main questions emerge for consideration : (1)

whether the petitioner company can be described to be an establishment having branches in more than one State and (2) whether the petitioner

company can be said to have an establishment of an oilfield. If it transpires that the petitioner is an establishment having branches in more than one

State or if the petitioner is having establishment of an oilfield, then in that event it has to be held that the Central Government is the appropriate

Government otherwise, the State Government would be the appropriate Government. The other argument of the respondents' learned Advocate

that the petitioner is under the control of the Central Government is, according to the view of this Court, without any substance. M/s. Indian Oil

Corporation Ltd., a Government company, and the said M/s. Petroleum Nasional Berhad, Malaysia, a Malaysian Government owned company,

may be the shareholders of the petitioner-company but the petitioner-company is a private ltd. company and has got a distinct and separate legal

entity.

11. Taking up the first question for consideration, it appears that the word ""branch"" has not been defined in the said Act of 1972 though the word

branches"" has been used in Section 2(a)(i)(b) of the said Act of 1972. The learned Counsel for the petitioner relied upon the dictionary meaning of

the word ""branch"" as indicated above. The learned Counsel for the respondents could not produce any material from which it could be inferred

that a different meaning can be ascribed to the word ""branch"". In view of this Court it cannot be said that either the corporate/head office at

Calcutta or the unit at Haldia is a branch of the registered office at Delhi. It is true that all the offices at the three different locations are parts of the

same company but it is difficult to say that one is the branch of another. The word ""establishment"" has also not been defined in the said Act of 1972

even though the said word ""establishment"" finds place in Section 2(a)(i) of the said Act. The respondent No. 1 has relied upon the dictionary

meaning of the word ""establishment"" and according to the said respondent it has been defined as a place where a person is settled for residence or

for transacting business. There cannot be any doubt that the head office/corporate office at Calcutta is an establishment by itself and it must have

been established for the purpose of transacting business of the petitioner-company. It cannot be said that the corporate/head office at Calcutta is a

branch of the registered office at New Delhi. Section 2(a) of the said Act of 1972 defines "appropriate Government" in relation to an

"establishment". It does not refer to the word "company" or "firm" or "association" or any other word of such nature. The section refers to the

word "establishment". If one is to consider the word "establishment" on the basis of the dictionary meaning as referred to by the respondent No. 1

then it simply means a place where business is transacted and may also be a place where a person is settled for residence, which aspect, of course,

is not relevant for the purpose of the present discussion. In this case since the petitioner-company is transacting its business at head

office/corporate office at Kolkata the said head office/corporate office at Kolkata is an establishment by itself. Thus the appropriate Government in

relation to such establishment at Kolkata, which does not have any branch in any other State, has to be the State Government.

12. The second question is whether the petitioner-company can be said to have an establishment of an oilfield. The learned Advocate for the

respondents have relied upon the meaning of the word "oilfield" as defined in the aforesaid Act of 1948. In the said definition it appears that an

"oilfield" means an area where any operation for the purpose of obtaining natural gas and petroleum etc. is to be or is being carried on. The three

things that essentially appear from the said definition is; first there has to be an area; second, certain operations must be carried on, and third, the

operation must be for the purpose of obtaining natural gas and petroleum etc. From the facts of the instant case it appears that, even though the

learned Advocate for the respondents has referred to the main object of the petitioner-company as stated in its memorandum of association, the

petitioner-company is not engaged in any operation for the purpose of obtaining natural gas and petroleum etc. Therefore, this Court is of the view

that the petitioner-company does not have any establishment of an oilfield. Therefore, Section 2(a)(i)(d) of the said Act is not applicable to the

facts and circumstances of the instant case.

13. The learned Advocate for the respondents submitted that the petitioner's activities is under the control of the Central Government since some

of the objects of the petitioner are to import, export, store and distribute LPG in bulk and packed forms which is covered under the category of

oilfield" as defined under the said Act of 1948. This Court has already held above that the petitioner-company does not come within the definition

of ""oilfield"" as defined in the said Act of 1948. The said learned Advocate also referred to the Ministry of Petroleum and Natural Gas order dated

26th April, 2000 and submitted that the petitioner is under the control of the Central Government. It appears from the said order dated 26th April.

2000 (at page 102 of the writ petition) that the said order was made in exercise of the powers conferred by Section 3 of the Essential

Commodities Act, 1955. It does not appear that by virtue of the said order any of the petitioner's establishments came under the control of the

Central Government or any of the petitioner's establishments belongs to the Central Government. It may be that the petitioners has to follow the

applicable rules and orders but following such applicable rules and orders does not necessarily bring the petitioner under the control of the

authority issuing such rules and orders.

14. In view of the discussion above, this Court is of the view that in respect of the petitioner's head office/corporate office at Kolkata and also the

unit at Haldia, the appropriate Government is the State Government. In such circumstances, the notice dated 04.10,2004 and also the order dated

01.03.2005 being Annexures "P2" and "P6" respectively, to the writ, petition are set aside. The State Government being the appropriate

Government, shall be entitled to take steps against the petitioner in the event the petitioner has committed or commits any breach of law as laid

down under the said Payment of Gratuity Act, 1972. The State Government shall be the appropriate Government for all purposes under the said

Act of 1972 in respect of the petitioner's head office/corporate office at Kolkata and the unit at Haldia.

15. The writ petition is disposed of. There will, however, be no order as to costs.

16. Urgent xerox certified copy of this order, if applied for be given to the parties on compliance of usual formalities.