

PATNA HIGH COURT

Ray Lime Stone and Co

Vs

Subdivisional Officer

Civil Writ Jurisdiction Case No. 50 of 1966

(R.L. Narasimham, C.J. and U.N. Sinha, J.)

05.05.1967

ORDER

R.L. Narasimham, C.J.

1. This is an application under Articles 226 and 227 of the Constitution to quash the direction given by the Subdivisional Officer, Sadar, Ranchi, acting as the appropriate authority under Sub-Section (3) of Section 20 of the Minimum Wages Act, 1948 (hereinafter referred to as the Act), directing the petitioner to pay minimum wages to its employees in accordance with the provisions of that Act. The main challenge is based on the contention that the petitioner is not an "employer" as defined in clause (e) of Section 2 of the Act.

2. Petitioner No. 1 is a company which carries on quarrying operation of limestone in village Ray in the district of Ranchi after having obtained a mining lease from the State Government, and petitioner no. 2 is said to be the proprietor of the said concern. It is further stated that the limestone is quarried at site and taken and utilised for the purpose of manufacture of tome.

3. The definition of "employer", as given in clause (e) of Section 2 of the Act refers to a person who employs one or more employees in any scheduled employment specified in the Schedule to the Act, part I of the Schedule enumerates twelve categories of employment and item 8 of that part refers "employment in stone breaking or stone crushing". The legal question for consideration by us is whether the said item can be applicable to employment dealing with extraction of limestone from quarries. Mr. De for the petitioners relied very much on the well known decision of the Supreme Court in *Madhya Pradesh Mineral Industry Association, Nagpur v. Regional Labour Commissioner (Central), Jabalpur*¹, where the said item in the Schedule came up for consideration. In that case the facts found were that for the purpose of extraction of manganese ores the operation of stone breaking and stone crushing was carried on and the stones so extracted were crushed into small pieces, washed and passed through serves of different meshes until the extraction of the manganese ore. Their Lordships while examining whether such an operation will

attract the scope of item 8 observed as follows :-

"We are unable to hold that when item 8 refers to stone-breaking or stone-crushing it is

intended to cover the breaking or the crushing of stones incidental to the manganese mining operations. The context seems to exclude the application of the wider meaning of the word 'stone' used in item 8. Therefore, our conclusion is that the stone-breaking or stone-crushing operations which are carried on in mines are not included in item 8 in the Schedule."

In coming to this conclusion, they attached due weight to the fact that the word "any" occurs in the remaining items enumerated in part I and is significantly absent in item 8.

4. Mr. De wanted to rely very much on the principle laid down in that case and urged that on the facts stated by the petitioner (which have not been controverted) it was clear that the primary purpose of the quarrying of limestone was to utilise the said mineral for the manufacture of lime by the process of calcination in lime kilns. Hence, according to him, the extraction of limestone by crushing or breaking was incidental to and ancillary to the subsequent manufacture of lime and that consequently the principle laid down in that judgement should apply.

5. This argument is not acceptable. In the said Supreme Court decision the admitted facts were that the mining operations for the extraction of manganese ore (see paragraph 5) consisted of removal of the over-burden, break-of big mineral stones like boulder ore or bed ore to manageable sizes, dressing of ores to remove impurities, etc. On these facts their Lordships held that the operation of stone-breaking and stone-crushing was incidental to the extraction of the manganese ore. They further held that the operation of stone-breaking or stone-crushing referred to in Item 8 of part I of the Schedule to the Act must refer to the main operation in the process and not the incidental operation. The question whether a particular operation is main or incidental, therefore, arose for consideration in respect of the mining operation itself. It had nothing to do with what may be subsequently done to manganese ore after it had been extracted and purified.

6. Here, apart from making that the limestone after extraction is used in the manufacture of lime by the process of calcination, the petitioners have nowhere stated that in the extraction of limestone itself there are two operations, namely main and incidental. Limestone, as is well known is found in rock formation, and it may be that other impurities, such as silica, are found in the rock in which limestone is embedded. The breaking and crushing of limestone for the purpose of extraction of limestone is the main operation in such quarrying industry, and it is not incidental to any other operation in the quarry. The distinction between a quarry and a mine is immaterial for the purpose of the Minimum Wages Act, as pointed out in the *State of Maharashtra v. Mohanlal Devichand Shah*²,

7. When their Lordships were referring to main and incidental operations they were not thinking of the future use of the ore after its extraction. Limestone after extraction may be used for several purposes, such as manufacture of cement, manufacture of pig iron, manufacture of glass, production of synthetic phenyl and several other purposes. It may also be used for the purpose of manufacture of quicklime by calcination, but the raw material for all these is limestone itself which is extracted from the rock formation by the process of stone cutting and crushing. In our opinion, therefore the stone-breaking and stone-crushing is the main operation in the extraction of limestone and consequently Item 8 of part I of the Schedule would

apply. We should further observe that, as pointed out by their Lordships in the aforesaid Supreme Court judgment the Act is a piece of beneficial legislation and it should be given the widest meaning so long as the language is capable of bearing such a construction. There is no special reason why persons employed in the breaking and crushing of ordinary rock should get the benefit of the Act whereas those engaged in breaking and crushing the limestone, which also is found in rock formation, should be denied that benefit.

8. For these reasons, the petition is dismissed, but there will be no order for costs.
Petition dismissed.

Cases Referred.

¹ AIR 1960 SC 1068

² AIR 1966 SC 189