

CASE NO.:
Appeal (civil) 5920 of 1999

PETITIONER:
UNION OF INDIA AND ORS.

RESPONDENT:
ESSEL MINING & INDUSTRIES LTD. AND ANR.

DATE OF JUDGMENT: 09/08/2005

BENCH:
ARIJIT PASAYAT AND H.K. SEMA

JUDGMENT:
JUDGMENT

ORDER

ARIJIT PASAYAT, J. :

Challenge in this appeal is to the judgment rendered by a Division Bench of the Orissa High Court quashing Clause-iii of paragraph 7 of the Explanation in Notification No. 514(E) dated 12.07.1994 issued by the Government of India, Ministry of Labour in purported exercise of powers conferred by Section 3(1)(b) read with Section 4(1)(iii) and 5(2) of the Minimum Wages Act, 1948 (in short 'the Act'). Stand of the writ petitioners before the High Court in the writ petition was that the inclusion sought to be made was impermissible in the background of what has been stated in The Mines Act, the Mines Rules and other pieces of legislation dealing with mining activities. The relevant portion of the Notification reads as follows :

EXPLANATION FOR THE PURPOSE OF THE NOTIFICATION :

"A person working or employed in or in connection with a mine is said to be working or employed "below ground" if he is working or employed :-

- (i) in a shaft which has been or is in the course of being sunk; or
- (ii) in any excavation which extends below superjacent ground; or
- (iii) in an open cast working in which the depth of the excavation measured from its highest to its lowest point exceeds six metres."

The High Court held that the authority issuing the Notification overlooked that it did not have the source of statutory power to incorporate such explanation in the Notification as done and, accordingly, as noted above, held that though the Notification was in operation, the Clause-(iii) of paragraph 7 of the Explanation is non est.

Mr. Amarendra Sharan, learned Additional Solicitor General submitted that the High Court failed to notice various facts of the Act and put unnecessary stress on the statutes relating to mining activities which had no relevance so far as the fixation of minimum wages is concerned. In response, Mr. Dushyant Dave, learned senior counsel appearing for the respondent-Company submitted that the classification contained in clauses (i) & (ii) of paragraph 7 of the Notification do not pose any problem but clause-(iii) which was impugned creates a class of employees which is not recognized under any statute relating to mining activities and therefore there is no sanctity in the Notification so far as that part is concerned.

We find that though the High Court referred to various statutes relating to the mining activities, e.g. The Mining Act etc., it did not indicate any reason as to why it was of the view that the authority issuing the Notification lacked statutory power to issue the Notification. Though the judgment runs to several pages, after noticing the rival submissions, the High Court in a very cryptic manner, disposed of the writ petition coming to the aforesaid view. It is not the number of pages in a judgment which is relevance. It is on the other hand, the sufficiency of reasons indicated to justify the conclusions. We may only add here that the paragraphs 28 and 29 of the judgment which are supposed to contain the conclusions are not only confusing, but also make little sense. They to quote the immortal words of Lord Sumner in *Rex v. Nat Bell Liquors Ltd.*, (1922) AC 128 "speak only with the inscrutable face of a Sphinx." It is "unspeaking order" as classically described by Lord Cairns IC in *Overseas of the Poor of Walsall Overseas v. London & NWR Co.*, (1879) 4 AC 30. In the fitness of things, therefore, the High Court should re-hear the writ petition and dispose of the same by a reasoned order. We make it clear that we have not expressed any opinion on the merits of the Case. It goes without saying that the parties shall be free to place all relevant aspects for consideration of the High Court when the matter is taken up afresh. It appears that no interim orders were passed by this Court. While the writ petition is being heard by the High Court, the relief that was granted to the writ petitioners, would be continued. By granting this protection, it shall not be construed as if we have expressed by opinion on the merits of the case. It would be relevant to note one further fact, as contended by the respondent that a Notification containing similar stipulation as was impugned, has been issued on 03.01.2002. The relevance and effect thereof, it goes without saying, shall be considered by the High Court if brought to its notice with appropriate pleadings. Since the dispute raised in the writ petition filed in the year 1994, we request the High Court to dispose of the writ petition as early as practicable.

The appeal is disposed of accordingly. No costs.