

A M/S. DAMODAR MANGALJI AND CO. ETC.

v.

THE REGIONAL DIRECTOR

FEBRUARY 27, 2001

B [S. RAJENDRA BABU AND S.N. PHUKAN, JJ.]

C *Employees State Insurance Act 1948/Mines Act 1952—Section 2(1), 2(12)/2(a)(i)—“Appropriate government” and “mines”—Scope of—Word ‘mine’ confines to case concerning a mine where extraction of ores actually takes place and not office—Further, the appropriate Government in respect of such offices is the State Government.*

D Mines of the appellant is situated at ‘P’ and office of the mines is at Sanquelin. Payment to the staff and workers is made through the office at Sanquelin. But the mining operations and incidental work is done at Pisarlen and head office* of the establishment is at Panaji. Government of Goa, Daman & Diu issued a notification under the Employee’s State Insurance Act, 1948, which is under challenge.

E Appellant contended before this court that the notification was not applicable to the mining industry because the appropriate Government in respect of mines was the Central Government and not the State Government. The expression ‘mine’ under section 2(1) of the ESI Act read with expression ‘in respect of’ would include the area where extraction of ores takes place and the other offices.

F Dismissing the appeals, the Court

G HELD : 1.1. The expression ‘mine’ under section 2(a)(i) of the Mines Act, 1952 confines to case concerning a mine where extraction of ores takes place and not offices or the other parts of establishment. Further the expression ‘the appropriate Government’ in the Industrial Disputes Act, 1947 is identical with the expression ‘the appropriate Government’ defined under the Mines Act, 1952.[184-A-E]

H *M/s. Sarajuddin and Co. v. Their Workmen*, [1962] Supp. 3 SCR 934, held applicable.

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The Ballarpur Collieries Co. v. State Industrial Court, Nagpur and Ors., [1966] 2 SCR 589, distinguished. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8890 of 1997.

From the Judgment and Order dated 12.2.97 of the Mumbai High Court in F.A. No. 88 of 1988. B

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Civil Appeal No. 8891 of 1997.

R.F. Nariman, Pratap Venugopal, P.S. Sudheer, K.J. John, for the Appellants. C

V.J. Francis and Ms. Sheela Goel, for the Respondent.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. C.A.No.8890/97 D

The appellant before us is aggrieved by the application of the notification dated 21.6.1977 issued by the Government of Goa, Daman & Diu under the Employees' State Insurance Act, 1948 [hereinafter referred to as 'the Act']. The appellant raised a contention that since they are engaged in mining industry and as a part of the integrated activity of such industry have an office away from the mines as such. The contention put forth before the ESI Court is that the said notification, in so far as it is applicable to a mining industry, is beyond the scope of the Act for the reason that "the appropriate Government" means, in respect of the establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in other cases, it is the State Government. The submission made on behalf of the appellant is that the expression "mine" used in Section 2(1) of the Act has to be read along with the expressions such as "in respect of" and read so, would mean not only the area where extraction of ores takes place, but also the other offices and that the enactment itself intends to make a distinction, it has so been made as is clear from Section 2(12) which defines the expression "factory", and mine which is subject to the operation of the Mines Act, 1952 is excluded from the purview of the Act and placed heavy reliance on the decision of this Court in *The Ballarpur Collieries Co. v. State Industrial Court, Nagpur & Ors.*, [1966] 2 SCR 589. On behalf of the respondent- E
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A ent, strong reliance is placed upon the decision in *M/s Serajuddin & Co. v. Their Workmen*, [1962] Supp. 3 SCR 934, where the specific question what is the appropriate Government has been considered and held the expression "mine" used in Section 2(a)(i) of the Mines Act, 1952 to confine only to those cases where it really concerns a mine where extraction of ores actually takes place as defined under the Mines Act and not other parts of the establishment.

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In the present case, the mines is situated at Pisurlen and the office of the mine at Sanquelin. The payment of the staff and workers is made through the office at Sanquelin while the mining operations and the incidental work is done at Pisurlen. The Head Office of the establishment is at Panaji.

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In *The Ballarpur Collieries Co.'s* case [supra] this Court was concerned with a notification which stated that the Act would come into force on 21.11.1947 "in all industries except the following" and then went on to name four industries, the third one being 'mines'. This Court held that after the word 'following' the word 'industries' must be read and thus read the notification in effect said the Act would come into effect on the given date in all industries except the industries mentioned. Therefore, it was held that it is not only mines but the mining industry itself that was exempted from the operation of the Act. In *M/s Serajuddin & Co.'s* case [supra] the dispute relating to the Head Office of a mining company was referred to the Industrial Tribunal by the West Bengal Government under the Industrial Disputes Act, 1947. It was held that the West Bengal Government was the appropriate Government and the decision turned on the interpretation of Section 2(a)(i) of the ID Act which defines 'the appropriate Government'. The crucial words that fell for interpretation were "in relation to an industrial dispute concerning a banking or insurance company or mine or an oilfield or a major port". It was held that the word 'mine' as used in Section 2(a)(i) of the ID Act referred to a mine as defined in the Mines Act and that a dispute with reference to the Head Office of the mine was not a dispute concerning a mine which must mean mine as defined under the Mines Act. Therefore, this Court, having interpreted the expression 'the appropriate Government' in the Industrial Disputes Act in *M/s Serajuddin & Co.'s* case [supra] which is identical with the expression 'the appropriate Government' as defined under the Act, we think the view taken by the High Court is correct and calls for no interference. This appeal, therefore, stands dismissed. No Costs.

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C.A.No.8891/97

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In this matter questions arising for consideration are identical to those

arose in C.A.No.8890/97. Following the decision therein, this appeal also stands dismissed. A

I.A. is filed by one of the Workmen-Union in support of the case of the appellant. Inasmuch as we have considered the contentions of the impleading applicant also along with that of the appellant and have allowed the said applicant to intervene in the matter, impleadment is unnecessary. The I.A. is disposed of accordingly. B

N.J.

Appeals dismissed.