A JOINT DIRECTOR OF MINES SAFETY

v.

TANDUR & NAYANDGI STONE QUARRIES (P) LTD.

APRIL 8, 1987

B [A.P. SEN AND V. BALAKRISHNA ERADI, JJ.]

Mines Act, 1952 Sections 2(h), 3(1)(b)(ii), 17 and 22—Qualified Manager for mine—Appointment of—word 'and' in Section 3(1)(b) (ii)—Interpretation of—To be read disjunctively—Not as being C *conjunctive.*

Interpretation of Statutes—Having regard to legislative intent manifested by the scheme of the Act—Word 'and to be construed as 'or' and read disjunctively and not as being conjunctive.

D

The Inspector of Mines, after an inspection, found that the respondents were engaged in working an open cast mine and that the number of persons employed on any one day exceeded 50. As respondents fell within the mischief of the proviso to clause (b) of Section 3(1) of the Mines Act, 1952, and became subject to the provisions of the Act, he E **served a notice under Section 22 read with Section 17 of the Act calling upon the respondents to appoint a qualified Manager for the mine.**

The respondents filed a writ petition in the High Court which allowed the petition and quashed the impugned notice on the ground that the use of the word 'and' occurring at the end of paragraph (b) of F **sub-clause (ii) of the proviso to clause (b) of sub-section (1) of Section 3 of the Act made the three paragraphs conjunctive and unless the conditions specified in paragraphs (a), (b) and (c) co-existed, the Inspector had no authority to serve the impugned notice.**

Allowing the appeal by the Joint Director of Mines, Safety.

G

HELD: 1.1. The High Court was not right in its interpretation of the word 'and' used at the end of paragraph (b) of sub-clause (ii) of the proviso to clause (b) of sub-section (1) of Section 3 of the Mines Act, 1952, as being conjunctive. It overlooked the fact that the use of the negative language in each of the three clauses implied that the word H **'and' used at the end of clause (b) had to be read disjunctively. [803G]**

2.1 Sub-section (1) of section 3 of the Act provides that the provisions of the Act, except those contained in ss. 7, 8, 9, 44, 45 & 46 shall not apply to (a) any mine or part thereof in which excavation is being made for prospecting purposes only and not for the purpose of obtaining minerals for use or sale, (b) any mine engaged in the extraction of any of the minerals specified therein, including lime stone. There is a proviso under each of the clauses (a) and (b) and they set forth three conditions on the happening of any one of which the proviso would be attracted, that is to say, the provisions of the Act would be made applicable to such a mine. [802F-H]

2.2 According to the plain meaning, the exclusionary clause in sub-section (1) of Section 3 of the Act read with the two provisos beneath clauses (a) and (b), the word 'and' at the end of paragraph (b) of sub-clause (ii) of the proviso to clause (b) of Section 3(1) must in the context in which it appears be construed as 'or'; and if so construed, the existence of any one of the three conditions stipulated in paragraphs (a), (b) and (c) would at once attract the proviso to clauses (a) and (b) of sub-section (1) of Section 3 and thereby make the mine subject to the provisions of the Act. Such construction is in keeping with the legislative intent mainfested by the scheme of the Act which is primarily meant for ensuring the safety of workmen employed in the mines. [803E-H]

[The Department will find a qualified person and depute him to work as Manager, and respondents shall be liable to pay his salary and allowances as may be stipulated by the Joint Director of Mines Safety.]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 502 of 1974.

From the Judgment and Order dated 16.2.1973 of the Andhra Pradesh High Court in W.A. No. 227 of 1972.

Mrs. Kitty Kumaramangalam and C.V. Subba Rao for the Appellant.

A. Subba Rao for the Respondents.

The following Order of the Court was delivered:

ORDER

After hearing Smt. Kitty Kumaramangalam, learned counsel for

A the appellant and Shri A. Subba Rao, learned counsel for the respondents, we are inclined to the view that the High Court was not right in its interpretation of the word 'and' used at the end of paragraph (b) of sub-cl. (ii) of the proviso to cl.(b) of sub-s. (1) of s. 3 of the Mines Act, 1952 as being conjunctive.

B In the present case, admittedly the respondents are engaged in working an open cast mine. After an inspection, the Inspector of Mines found that the respondents were engaged in the open cast mining and the number of persons employed on any one day exceeded 50. That being so, the respondents fell within the mischief of the proviso to cl.(b) of s. 3(1) of the Act and became subject to the provisions of the Act. The Inspector was therefore well within his powers to serve a C notice under s. 22 read with s. 17 of the Act calling upon the respondents to appoint a qualified Manager for the mine. The High Court on an erroneous interpretation of the word 'and' occurring at the end of paragraph (b) of sub-cl. (ii) of the proviso to cl. (b) of sub-s. (1) of s. 3 of the Act held that the use of the word 'and' made the three D paragraphs conjunctive and unless the conditions specified in paragraphs (a), (b) and (c) co-existed, the Inspector had no authority to serve the impugned notice. It accordingly allowed the writ petition filed by the respondents and quashed the impugned notice.

In order to appreciate the point involved, it is necessary to refer E to a few statutory provisions. The object and purpose of the Act, as reflected in the long title, is that it is an Act to amend and consolidate the law relating to the regulation of labour and safety in mines. By s. 2(h) of the Act, a person is said to be 'employed' in a mine who works under appointment by or with the knowledge of the manager, whether for wages or not, in any mining operation. Sub-s. (1) of s. 3 of the Act F provides that the provisions of the Act, except those contained in ss. 7, 8, 9, 44, 45 and 46 shall not apply to (a) any mine or part thereof in which excavation is being made for prospecting purposes only and not for the purpose of obtaining minerals for use or sale, (b) any mine engaged in the extraction of any of the minerals specified therein, including lime stone. There is a proviso under each of the clauses (a) G and (b) and they set forth three conditions on the happening of any one of which the proviso would be attracted, that is to say, the provisions of the Act would be made applicable to such a mine. The provision of sub-s. (1) of s. 3 of the Act insofar as relevant for purposes of this case reads as follows:

H "3. *Act not to apply in certain cases*—(1) The provisions of

this Act, except those contained in sections 7, 8, 9, 44, 45 and 46 shall not apply to— A

(a) x x

(b) any mine engaged in the extraction of kankar, murrum, laterite, boulder, gravel, shingle, ordinary sand (excluding moulding sand, glass sand and other mineral sands), ordinary clay (excluding kaolin, china clay, white clay or fire clay), building stone, road metal, earth, fuller's earth and lime stone: B

Provided that— C

(i) x x x

(ii) where it is an open cast working—

(a) the depth of the excavation measured from its highest to its lowest point nowhere exceeds six meters; D

(b) the number of persons employed on any one day does not exceed fifty; and

(c) explosives are not used in connection with the excavation." E

According to the plain meaning, the exclusionary clause in sub-s. (1) of s. 3 of the Act read with the two provisos beneath clauses (a) and (b), the word 'and' at the end of paragraph (b) of sub-cl. (ii) of the proviso to cl. (b) of s. 3(1) must in the context in which it appears be F construed as 'or'; and if so construed, the existence of any one of the three conditions stipulated in paragraphs (a), (b) and (c) would at once attract the proviso to clauses (a) and (b) of sub s. (1) of s. 3 and thereby make the mine subject to the provisions of the Act. The High Court overlooked the fact that the use of the negative language in each of the three clauses implied that the word 'and' used at the end of cl. G (b) had to be read disjunctively. That construction of ours is in keeping with the legislative intent manifested by the scheme of the Act which is primarily meant for ensuring the safety of workmen employed in the mines.

We accordingly allow the appeal, set aside the judgment of the H

A High Court and dismiss the writ petition. However, it was represented by learned counsel for the respondent that it is difficult to find a duly qualified person to come and serve as Manager of a mine in rural areas and we should call upon the appellant to find a suitable person for appointment as Manager. Learned counsel for the appellant was however gracious enough to suggest that the Department will find a
B qualified person and depute him to work as Manager, and the respondents shall be liable to pay his salary and allowances as may be stipulated by the Joint Director of Mines Safety. The Joint Director will select and depute a proper person to serve as Manager of the respondents' mine within thirty days from the receipt of this order.

C In view of this, the appellant will consider the feasibility of not launching a prosecution against the respondents for their past failure to appoint a duly qualified Manager as required under s. 17 of the Mines Act, 1952.

N.P.V. Appeal allowed.