RADHU K. KAKDE OF BOMBAY INHABITANT, BOMBAY

A

v.

UNION OF INDIA & ORS.

DECEMBER 11, 1985

[V. BALAKRISHNA ERADI, R.B. MISRA AND V. KHALID, JJ.]

B

Payment of Bonus Act, 1965 section 32(iv), scope of - Whether the Canteen Stores Department (India) under the Ministry of Defence is an "establishment" engaged in any industry carried on by or under the authority of any Department of the Central Government and therefore, covered by the provisions of section 32(iv) of the Act.

C

Prior to July 1, 1942, canteen facilities had been provided to the armed forces of the country by a company known as "Canteen Contractors' Syndicate". On June 13, 1942 the defence department took over the business of the said company and it was run by the Government of India under the title and name "Canteen Stores Department". After partition of the country, the Canteen Stores

D

Department of undivided India was wound up and its terminal profits were distributed between India and Pakistan and India's share formed the working capital for the Canteen Stores Department (India), which was formally inaugurated as a "Government of India Undertaking" for a period of three years in the first instance commencing from January 1, 1948. The

E

recruitment rules for the various categories of services of the Canteen Stores Department (India) were notified by the president by the Ministry of Defence letter dated June 28, 1973. By another letter dated January 28, 1969, Government orders as applicable to defence (Civilians) were made applicable to the Canteen Stores Department (India) employees in toto automatically from the date

F

of their applications to Defence (Civilians). Canteen Stores Department (India) was allowed to tender military credit notes for payment of railway freight by the Government of India (Ministry of Railways) Memorandum dated February 28, 1971 addressed to the Ministry of defence. When the question of applicability of section 32(iv) of the Payment of Bonus Act, 1965

G

came up before the Division Bench of the High Court of Bombay, the High Court held that the exemption provided in that section is attracted inasmuch as the Canteen Stores Department is an establishment engaged in an industry carried on by or under the authority of a department of a Central Government. Hence the appeal by special leave.

H

Dismissing the appeal, the Court, A

HELD: In the light of all the facts pertaining to the history, organisational structure, exercise of functional control by Government authorities and the special nature of service rendered by the Canteen Stores Department (India) to the defence forces of the country, it is an "establishment" engaged in an B industry carried on by or under the authority of a department of the Central Government namely, the Ministry of Defence. [826 C-E]

Rashtriya Mill Mazdoor Sangh, Nagpur v. The Model Mills, Nagpur and Anr., [1985] 1 S.C.R. 751 applied.

C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 484 of 975.

From the Judgment and Order dated 25.6.1973 of the Bombay High Court in Special Civil Appln. No. 1189 of 1968.

D

Jitendra Sharma for the Appellant.

M.S. Gujaral, G.D. Gupta and R.N. Poddar for the Respondents.

The Judgment of the Court was delivered by E

BALAKRISHNA ERADI, J. In this appeal by special leave against the judgment of a Division Bench of the High Court of Bombay, the only question raised is whether the provisions of the Payment of Bonus Act, 1965 (hereinafter called the 'Act') are applicable to the employees of the Canteen Stores Department. The answer to this question will depend upon whether the Canteen F Stores Department is an 'establishment' engaged in any industry carried on by or under the authority of any department of the Central Government; that is because Section 32(iv) of the Act lays down that "Nothing in this Act shall apply to - employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central G Government or a State Government or a local authority." In the judgment under appeal, the High Court has held that the exemption provided for in Section 32(iv) is attracted inasmuch as the Canteen Stores Department is an establishment engaged in any industry carried on by or under the authority of a department of the Central Government. The correctness of the said conclusion recorded by the High Court is assailed by the appellant in this H appeal.

A After bestowing our careful consideration to all aspects of the case we are clearly of opinion that the view taken by the High Court is perfectly correct and that this appeal has only to be dismissed. That the Canteen Stores Department is engaged in an industry is not in dispute before us and the sole question is whether the said industry is carried on by or under the authority B of any department of the Central Government. For a determination of the said question one has to examine inter alia the history, origin and organisational structure of the establishment, which are the authorities exercising financial, administrative and executive control over it and the rules that govern its functioning.

C The High Court has in its judgment set out in elaborate detail all the relevant facts pertaining to the origin and development of this Department right from the period of Second World War up till the present time. It is unnecessary for us to recapitulate in this judgment all those materials in full. However, we shall refer to certain salient features emerging from the record produced in the case which according to us D conclusively go to show that the Canteen Stores Department is an establishment engaged in an industry carried on by or under the authority of a department of the Central Government.

Prior to July 1, 1942, canteen facilities had been provided to the armed forces of the country by a company known as "Canteen E Contractors' Syndicate." By a Notification (Annexure 'A') dated June 13, 1942 published by the Defence Department in the Gazette of India, the business of the said company was taken over by the Government of India and it was to be run by the Government under the name "The Canteen Stores Department." As and from the date of taking over i.e. July 1, 1942, the Government assumed control of F the company's business and undertook to meet all liabilities of the company as existed on the date of the taking over. This was how the Canteen Stores Department came into being and it was continuing to function as such up till the date of the partition of the country. After partition of the country, the Canteen Stroes Department of undivided India was wound up and its G terminal profits were distributed between India and Pakistan and India's share formed the working capital for the Canteen Stores Department (India). by a letter dated December 19, 1947 issued by the Ministry of Defence, Government of India to the Quartermaster General (India) sanction of the Governor General was conveyed to the inauguration of Canteen Stores Department (India) as a H 'Government Undertaking' for a period of three years in the first instance commencing from January 1, 1948. The Services were to comprise:-

(i) Canteen Services (India) Board of Control. A

(ii) Canteen Section as a part of Q/Coord in QMG's Branch Army Headquarters (India).

(iii) Canteen Stores Department (India).

The duties and functions of the three bodies were to be as set out in the Annexure to the said letter. Subsequently, by another letter dated October 27, 1950, the sanction of the President was conveyed to the continuance of Canteen Services (India) inclusive the Canteen Stores Department (India) as a Government of India Undertaking to function under the control of the Ministry of Defence. B C

A Study Group appears to have been constituted to examine the organisational set up of the Canteen Stores Department (India) and based on the recommendations of the said Study Group, Canteen Services (India) was re-organised and besides the three wings mentioned earlier an Executive Committee of the Board of Control was also set up by the letter dated April 17, 1969 issued by the Government of India, Ministry of Defence to the Chief of the Army Staff. Detailed instructions regarding the policy to be pursued in regard to procurement, storage, distribution, disposal of stores and fixation of wholesale and retail prices were issued by the Government of India to the Chief of the Army Staff by the letter (Annexure 'E'), dated August 29, 1969 and it was as per these instructions that the Canteen Stores Department was carrying on its activities. It is noteworthy that this letter was issued with the concurrence of the Ministry of Finance (Defence) and this is specifically stated in the last paragraph thereof. D E

By the notification (Annexure 'F') dated February 1, 1966, issued by the Ministry of Law in exercise of the powers conferred by clause (1) of Article 299 of the Constitution, various Officers of the Canteen Stores Department (India) designated therein were authorised to enter into contracts on behalf of the President of India. The Notification states that contracts for local purchases could be entered into by the Chairman Board of Administration and that contracts and deeds relating to supply or purchase for the Canteen Stores Department (India) and leases of lands and buildings belonging to a department could also be executed by the Chairman Board of Administration. F G

The recruitment rules for the various categories of services of the Canteen Stores Department (India) were notified H

by the President by the Ministry of Defence letter dated June 28, 1973 - Annexure 'G'. By the letter dated January 28, 1969, addressed by the Army Headquarters to the Chairman, Board of Administration,Canteen Stores Department (India), it was intimated that Government orders as applicable to Defence (Civilians) should be made applicable to the Canteen Stores Department (India) employees in automatically from the date of their applications to Defence (Civilians). That the Government had complete control over the surplus generated by the department and that it could be distributed only with the sanction of the President is clear from the letter dated January 9, 1975 - Annexure 'I' issued by the Ministry of Defence to the Chief of the Army Staff. The canteen Stores Department (India) was allowed to tender military credit notes for payment of railway freight by the Government of India (Ministry of Railways) Memorandum dated February 20, 1971 addressed to the Ministry of Defence.

In the light of all these facts pertaining to the history, organisational structure, exercise of functional control by Governmental authorities and the special nature of service rendered by it to the Defence forces of the country, we have no hesitation to hold that the High Court was clearly right in holding that the Canteen Stores Department (India) is an 'establishment' engaged in an industry carried on by or under the authority of a department of the Central Government namely, the Ministry of Defence.

The scope of the expression "establishment engaged in any industry carried on by or under the authority of any department of the Central Government or State Government or local authority" occurring in Section 32(iv) has been explained in a recent decision of this Court in **Rashtriya Mill Mazdoor Sangh, Nagpur v. The Model Mills, Nagpur and Anr.**, [1985] 1 S.C.R. 751, to which judgment two of us (Eradi J. and Khalid J.) were parties. On an application of the interpretation given to the expression in that judgment, the present case clearly falls within the scope of Section 32 (iv) of the Act in view of the special and exclusive nature of the service rendered by the Canteen Stores Department (India) to the defence personnel for which purpose alone the "Industry" is being carried on by the establishment.

We accordingly, confirm the judgment of the High Court and dismiss this appeal. There will be no order as to costs.

S.R. Appeal dismissed.