

(1996) 10 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 14946 of 1996

Abraham Thomas

APPELLANT

Vs

The Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 15-10-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12, 2, 22, 25

Citation : (1996) 74 FLR 2670 : (1997) 2 ILR (Ker) 99 : (1997) 1 LLJ 335

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : H.B. Shenoy and Ashok B. Shenoy, for the Appellant;

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—Petitioner has challenged the preliminary finding of the Labour Court in I. D.No. 118/95.

2. The facts relating to the filing of the O.P are as follows: Seven managements of plantation estates denied employment to 22 persons. The Government of Kerala referred to the said dispute for adjudication before Labour Court. The petitioner- management raised a preliminary objection stating that the Labour Court has no jurisdiction to adjudicate the dispute referred. The said preliminary issue was decided overruling the objection of the management holding that the subject matter can be adjudicated by the Labour Court and the Government had the competency to refer the matter under I.D. Act. The said finding is under challenge.

3. Learned counsel for the petitioner submits that the dispute can only be an "agricultural dispute" under the Kerala Agricultural Workers Act, 1974. He also contended that plantation owned by the owners will not be an industry under I.D. Act, but is only an agricultural land and the workers are agricultural workers. Agriculture has been left to the exclusive jurisdiction of the State Legislatures and there is a clear distinction between the agriculture on the one hand and the

industry on the other. Learned counsel also submitted that under Article 254(2) of the Constitution of India State Law will prevail in reference to the concurrent matter if it is assented to by the President. He further submitted that in the light of Section 41 of the Kerala Agricultural Workers Act, the same will prevail over the provisions of the 1 .D. Act.

4. I have heard the counsel. This Court in O.P.No.4919/1987 dated March 31, 1989 held that even in the case of dismissal of agricultural worker it is not necessary that the dispute has to be adjudicated by the Agricultural Tribunal and the subject-matter can be adjudicated by the Industrial Tribunal. That was also a case of tapper in a rubber estate. N. Fathima Beevi," J. (as she then was) held that the assumption that only plantation coming within the purview of the plantations Labour Act, 1951 alone will come within the definition of industry is wrong.

"The Agricultural Workers Act is a State enactment to provide for the welfare of agricultural workers in the state and to regulate the conditions of their work. Agricultural worker is a person who does agricultural operation in relation to agricultural land, i.e land used for a cultivation but does not include any plantation as defined in the Plantations Labour Act. In a plantation, there are both agricultural and industrial operations, only those who are engaged in cultivation on the land and connected work are agricultural workers. Those persons employed in tapping rubber trees or doing work in the smoke house or factory in the estate, are not agricultural workers. The person employed in tapping is an industrial worker falling within the definition of Section 2(5).

5. Even assuming that a tapper employed in an estate is also an agricultural worker, he falls within the definition of workman under the Industrial Disputes Act, the estate falls within the definition of industry."

5. An "industry" as per Section 2(j) of the Industrial Disputes Act means any business, trade, undertaking, manufacture or calling of employers. The definition and the scope of this work was subject-matter of a Constitution Bench in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, The Supreme Court held as follows:

"131."Industry ", as defined in S.2 (j) and explained in Banerji 1953 I LLJ 195 has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiru-tal or religious but inclusive of material things or services geared to celestial bliss i.e making, on a large scale prasad or food) prima facie, there is an industry in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the publicjoint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer- employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking."

O.P. Malhotra in his book on "The Law of Industrial Disputes" states thus:

"After the decision of the Supreme Court in Bangalore Water Supply and Sewerage Board v. A Rajappa(d) any activity connected with "agriculture" or "agricultural operations" affecting "industrial and labour disputes" of "welfare of labour" might fall within the ambit of "industry", if it satisfies the triple test laid down therein."

6. Under the Agricultural Workers Act, plantations as defined in the Plantations Labour Act, 1951 are excluded. It is rather doubtful whether the case of the respondents would be covered by the Act 18/74. The Supreme Court in Harinagar Cane Farm and Others Vs. State of Bihar and Others, held that Agricultural operations carried on by a limited Company formed for that purpose is an industry and observed that doctrinaire consideration should be avoided by confining to the pleading between the parties. In this case, the petitioner is owning a rubber producing "agricultural land" planted in the year 1954. He has engaged one casual worker for the tapping work. Applying the same principle of the above judgment, the petitioner had invested for planting rubber trees for the purpose of making profits. The worker contributed to the production of rubber. Therefore, even the narrow traditional requirement of the concept of trade is satisfied by the agricultural operators of the appellant. In any event, the whole question as to the dispute has to be decided by the Labour Court.

7. It is next contended that the State Act has to prevail in view of repugnancy. The Kerala Agricultural Workers Act, 1974 has received the assent of the President. According to the counsel, there is a direct conflict between provisions contained in Sections 10 & 12 of the Industrial Disputes Act, a law made by Parliament and Sections 22 and 25 of Kerala Agricultural Workers Act, 1974, a law made by Kerala Legislature and by virtue of Article 254(2), Sections 22 and 25 of the State Act will prevail. On the question of repugnance, the Supreme Court in Deep Chand Vs. The State of Uttar Pradesh and Others, laid down the following three principles for ascertaining it:

(i) Whether there is direct conflict between the two provisions?

(ii) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter referring the Act of the State Legislature?

(iii) Whether the law made by Parliament and the law made by the State Legislature occupy the same field?

Applying these principles, I do not find any direct conflict between the two enactments. The Industrial Disputes Act is not exhaustive and they do not

occupy the same field. The mere fact the worker is an agricultural worker does not exclude the enquiry under the Industrial Disputes Act, subject to satisfying the provisions.

8. The Industrial Disputes Act is an Act providing for the investigation and settlement of industrial disputes, whereas the Kerala Agricultural Workers Act is an Act to provide for the welfare of agricultural workers and regulate the conditions of work.

9. The Plantations Labour Act, 1951 is an Act providing welfare of labourers and to regulate the conditions of work in plantation (Central Act 69/51). The Kerala Agricultural Workers Act excludes plantations as defined under Plantations Act from agricultural land. The worker in the plantation is not an agricultural worker under the Kerala Agricultural Workers Act. In *Zaverbhai Amaldas v. State of Bombay* 1954 Cri.LJ 1822 the Supreme Court has laid down that if the subject matter of the legislation is identical so that both cannot stand together then the question of repeal arises. In this case, as seen earlier, the subject matter and import of both legislations are not identical and hence no repugnance. Therefore, the contention that the Industrial Disputes Act is repugnant to Kerala Agricultural workers Act and the later Act will prevail is not sustainable.

10. The Labour Court has jurisdiction over the denial of employment of worker. The preliminary finding of the Labour Court is proper. Hence the Original Petition is dismissed.