
(1972) 09 OHC CK 0020
In the Orissa High Court

Ananda Chandra Swain

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 26-09-1972

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1973) 1 LLJ 508

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Judgement

K.B. Panda, J.—This writ petition raises the simple question whether Balimela Dam Project is an "industry" as defined under the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) in the following context.

2. The petitioner was appointed as a machine tool operator, Grade II, on temporary basis and was posted under sub-division No. 15 on a monthly salary of Rs. 108 with usual dearness allowance. In January, 1964 his pay was refixed at Rs. 120 per month. In view of his good work he was upgraded to the post of Grade I Chargeman on a basic pay of Rs. 150 per month in December, 1964. While working so, he developed eye ailment because of working with surface grinding machine without adequate safety measures for which he had to undergo treatment. According to the petitioner, by the use of protective spectacles his eye sight was improving. During the period of treatment he was reverted to the post of machine tool operator, Grade II, on the ground that he was found not suitable due to 30% deficient eye sight (annexure-1).

3. Thereafter the petitioner raised a dispute before the Assistant Labour Commissioner at Jeypore (Koraput) but without success. On 20-5-70 the petitioner was communicated that his services were terminated with effect from 21-5-70 without assigning any reason therefore (annexure-3). The case of the petitioner was taken up by Balimela Dam Project Workers' Union before the Conciliation Officer, Koraput, which proved abortive.

4. In the writ petition certain steps taken by the petitioner against the orders of reversion and termination including filing of O.J.C, 144/ 1971 have been mentioned which need not be referred to as they are unnecessary for the purpose of disposal of this application.

5. Finally, the petitioner made a representation to the Government for referring his case to the Industrial Tribunal for adjudication, but the same was turned down as per annexure-7 in the following manner;

* * * He is hereby informed that the Industrial Disputes Act, 1947 is not applicable to the Balimela Dam Project. His representation, therefore, does not merit consideration for reference of the dispute to the Industrial Tribunal for adjudication.

It is this annexure-7 that is challenged in the writ application.

6. In the counter it is stated that the appointment of the petitioner was purely temporary and so could be terminated at any time without any prior notice and assigning any reason therefore. In assertions in the writ petition regarding eye trouble, attempt at reconciliation, filing of O.J.C. in the High Court and final termination of the service of the petitioner are all admitted. The main stand taken in the counter is that Balimela Dam Project is not an "industry" to which the Act can apply, and alternatively, the Project not having been completed but is in the process of construction, it cannot be said to be "industry" at present as defined under the Act.

7. It has been specifically averred In para 24 of the writ petition that the construction of Balimela Dam Project commenced as early as 1964 in Solam river in Koraput district for generation of hydro-electric power under the direct management of the Government of Orissa, that by virtue of agreement between the Government of Orissa and Andhra it has been decided that half of the total flow available from the Balimela reservoir would be let down the river towards Andhra Pradesh share and the other half into the high head power of Orissa State which will have an installed capacity of 3,60,000 K. W. and the tail water will be subsequently utilised for irrigating about 2,40,000 acres of land in Malkangiri Motu plains.

8. To this, there is no specific denial in the counter except that the Project is not an industry, because it has not yet been completed and is still under construction. Further it is stated that it is being constructed for generating electricity to provide irrigation in order to serve the people of a welfare State. As such, it does not come under the definition of "industry" u/s 2(j) of the Act and that the rejection of the prayer of the petitioner to refer the matter to the Labour Court was, therefore, legal and valid.

9. What is "industry" and what is an "industrial dispute" have been the subject-matter of authoritative judicial pronouncement on several occasions. However, for ready reference the definitions of those expressions are extracted below:

"Industry" means any business, trade, undertaking, "manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

"industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

10. The leading cases on the subject are (i) *Management of Mis. T. B. Hospital v. The Workmen* 1970 11 L.L.J. 266 1970 (20) I. L.R. 399 (S.C.), and (ii) *Radio Foundation Engineering Ltd. v. State of Bihar* (1969) Pat. L.J.R. 319.

11. It has been held in *Management of T. B. Hospital v. The Workmen* 1970 11 L.L. J. 266 (1970) 20 I.F.L.R. 399 (S.C.), that if hospital, nursing home or dispensary, is run as a business in a commercial way there may be found elements of an industry there. Then the hospital is more than a place where persons can get treated for their ailment and it becomes a business.

12. The view taken by their Lordships in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , that hospitals run by Government and even by private associations not on commercial lines but on charitable lines or as part of the functions of Government Department of Health were held included in the definition of industry. It was held to be an extreme view of the matter which was not justified. Their Lordships further held that Safdarjung hospital was not embarked on an economic activity which could be said to be analogous to trade or business, that there was no evidence that it was more than a place where persons could get treated, that this was a part of the function of the Government and the hospital was run as a department of the Government and it could not be said to be an industry.

13. What is meant by the expressions "industry, trade, business, undertaking, manufacture" occurring in the definition of "industry" has been discussed in large number of cases and considered elaborately in *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, . The conclusion in that case may be stated:

Primarily, therefore, industrial disputes occur when the operation undertaken rests upon co-operation between employers and employees with a view to production and distribution of material goods, in other words, wealth, but they may arise also in cases where the co-operation is to produce material services. The normal cases are those in which the production or distribution is of material goods or wealth and they will fall within the expression trade, business and manufacture.

Their Lordships summarising the case held thus:

The-reason for these cases, as also the Gymkhana Club case (supra), lies in the kind of establishment with which we are concerned. The Gymkhana Club case

(supra) of this Court (followed and applied In Cricket Club of India Vs. Bombay Labour Union and Another, has held that non-profit making members' clubs are not employed in trade or industry and their employees are not entitled to engage in trade disputes with the clubs. This view finds support from Hotel and Catering Industry Training Board v. Automobile Proprietary Ltd. (1969) 1 W.L.R. 697. The Solicitors case cited by Mr Rama-murthi was so decided because there the services rendered by the employees were in aid of professional men and not productive of material goods or wealth or material services. The other case of University was also decided, as it was, for the same reason.

14. The case reported in 1969 P.L.J.R. 319 offers a parallel case in which Government of Bihar in collaboration with some foreign companies had undertaken a project, named Bihar Governments' Tenughat Dam Project. In deciding the case their Lordships observed:

In such a situation although the construction of the Tenughat Dam at a unit may be an industry carried on by the State Government, its different operations, carried by independent contractors, firm or manufacturers or businessmen will surely also be different industries within the meaning of the Act and the labourers employed by such different industries will be workmen within the meaning of the Act.

15. It is unnecessary to catalogue the catena of decisions on the point. Suffice it to say the point is not more at large. It is now too late in the day to say that Balimela Dam Project, which has the ultimate object of generating electrical power to run different businesses and industry on payment, is not an industry as defined under the Act. Further, in the process of construction, the industry contemplated does not cease to be so or becomes otherwise. No matter whether the project is complete or in the process of construction, the relationship of employer and employee starts from the date the project is taken into hand and persons are appointed under whose co-operation the aim is to be achieved. Therefore, the contentions raised on behalf of the State are baseless and hence rejected.

16. The State is said to be an ideal litigant. The petitioner is a poor employee who has suffered from eye-sight while working near the grinding machine without sufficient protection. He deserves all sympathy. But to deny him the modest prayer to refer his matter to the Tribunal, as has been done in this case under annexure-7, does not augur well of a State supposed to have certain norms.

17. In the result, therefore, the objection raised on behalf of the State being frivolous, they are repelled. The impugned order annexure-7 is quashed. Let a writ of mandamus be issued for directing the case of the petitioner to be referred to the Industrial Tribunal. The writ application succeeds with costs, hearing fee Rs. 100.

R.N. Misra, J.

18. I agree.