

(2012) 02 DEL CK 0351

In the Delhi High Court

Case No : LPA 97 of 2012

Aseem Abbas

APPELLANT

Vs

Rajghat Samadhi Committee and Another

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F, 5

Citation : (2012) 133 FLR 671 : (2012) 3 LLJ 722

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : S.K. Jaswal and Mr. L.K. Dixit, for the Appellant; Mukti Bodh, for R-1 and Mr. H.C. Bhatia, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

Caveat No. 132/2012 in LPA No. 97/2012 & Caveat No. 133/2012 in LPA No. 98/2012

The Counsel for the respondent No. 1 has appeared. The caveats stand discharged.

LPA 97/2012 & LPA 98/2012

1. The question which falls for consideration in this appeal is as to whether the respondent No. 1 Rajghat Samadhi Committee (RSC) is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The appellants were engaged as Security Guard by RSC. They were appointed in September, 1997 and November, 1998 and their services were terminated on 08.09.2000 & 12.02.2001 respectively. The appellants raised industrial disputes which were referred to the Central Government Industrial Tribunal (CGIT) for adjudication on the question whether the termination from service was illegal and / or unjustified. The respondent No. 1 RSC took preliminary objection that the

reference were not maintainable as the RSC was not an industry within the meaning of Section 2(j) of the ID Act. Specific issue was framed on this aspect. The CGIT returned a finding that the respondent No. 1 RSC was an industry; on merits the termination of the appellants was held to be illegal and unjustified in law being in violation of Section 25F of the I.D. Act. As a consequence, the CGIT vide common award dated 29.03.2007 directed reinstatement of the appellants with 25% back wages. Against this award, the respondent No. 1 RSC filed the writ petition being W.P.(C) No. 7059/2007 and W.P.(C) No. 7065/2007 which have been allowed by the learned Single Judge vide common order dated 18.08.2011. A perusal of order dated 18.08.2011 would show that on an earlier occasion, the same very Bench had taken a view that RSC was not an industry as envisaged u/s 2(j) of the I.D. Act and in view thereof the impugned award dated 29.03.2007 rendered by the CGIT has been set aside. The earlier judgment which the learned Single Judge has referred, is the judgment dated 26.03.2010 rendered in W.P.(C) No. 1059/2008 titled as Kanhaiya Lal Vs. UOI. Copy of the said judgment is annexed with the appeal paper book and we have gone through the same.

2. The respondent No. 1 RSC is constituted under the Rajghat Samadhi Act, 1951. The Statement of Objects and Reasons of the said Act would reveal that the object of the Act was to ensure the proper maintenance, preservation and administration of the Rajghat Samadhi being the Shrine built in reverence for the Father of the Nation, Mahatma Gandhi. The Act constitutes a Committee named as the Rajghat Samadhi Committee, composition whereof is prescribed therein and vests the administration and control of the Samadhi in the said Committee. The powers and duties of the Committee are stipulated in Section 5 which reads as under:

"5. Powers and duties of the Committee. - Subject to such rules as may be made under this Act, the powers and duties of the Committee shall be -

(a) to administer the affairs of the Samadhi and to keep the Samadhi in proper order and in a state of good repair;

(b) to organize and regulate periodical functions at the Samadhi;

(c) to do such other things as may be incidental or conducive to the efficient administration of the affairs of the Samadhi."

The Committee has also been empowered to make bye-laws inter alia for appointment of such persons "as may be necessary to assist the Committee in the efficient performance of its duties and the terms and conditions of service of such employees"

3. What follows from the above is that the only task performed by the respondent RSC is maintenance, preservation and administration of the Rajghat Samadhi. Axiomatically, anyone employed by the respondent RSC would also be employed only for performance of the said duties / task. A perusal of the website

"www.urbanindia.nic.in" of the Ministry of Urban Development, Government of India which lists Rajghat Samadhi Committee as one of the Statutory Bodies shows that the RSC also organizes special functions on 2nd October and 30th January to observe the Birth and Death Anniversaries of Mahatma Gandhi and on these two occasions all-religion prayer, photo exhibition, sale of Gandhian literature etc. is held. Besides these annual functions, all-religion prayer and spinning programmes are held regularly throughout the year. The Samadhi attracts a large number of tourists and other visitors including school children. The visitors are attracted to the Samadhi out of reverence for Mahatma Gandhi, to pay respect to him and to imbibe Gandhian ideals from the Gandhian atmosphere created and maintained at the said Samadhi. We find the Rajghat Samadhi is thus akin to a place of worship. We have, thus wondered as to whether places of worship can be treated as an industry.

4. Our research shows:

(i) That a Division Bench of the Andhra Pradesh High Court in Tirumala Tirupati Devasthanam Vs. Commissioner of Labour, faced with the question whether the Tirumala Tirupati Devasthanam which had employed certain workmen could be held to be an industry and finding that the Tirumala Tirupati Devasthanam consisted of a group of religious institutions in Tirumalai and Tirupathi together regarded as one religious institution for the purposes of Charitable and Religious Endowments Act and that its main function was to arrange for the worship in its temples and to enable the pilgrims from all parts of India to visit temples and offer their prayers, held the same to be essentially a religious institution. It was further held that even though having regard to the enormous flow of pilgrims throughout the year, the Devasthanam has to maintain several departments viz. Transport Department for the convenience of the pilgrims, there could be no doubt that the essential character of the institution was that of a religious institution. It was held that in the circumstances, the Devasthanam could not be regarded as an industry within the meaning of the Workmen employed in the Madras Pinjrapole Vs. Management of the Madras Pinjrapole and Another, laying down that where the activity in its essence is religious or spiritual, for instance a temple or church, it could not be considered as an industry.

(ii) The High Court of Punjab & Haryana also in Shiromani Gurdwara Parbandhak Committee of Management Gurdwara Dakh Hwaran Sahib Vs. Presiding Officer Labour Court and Others, held the Gurdwara Parbandhak Committee to be not a commercial organization and not in the business of distribution of goods and services which satisfy human wants and the working of the Gurdwara Parbandhak Committee to be spiritual and religious with the objective to supervise and control the notified Sikh Gurdwaras under the Sikh Gurdwaras Act and not to be an industry. It was further held that distribution of Karah Parshad and operation of a free kitchen i.e. Langar would not bring the Gurdwara Parbandhak Committee under the purview of Industrial Disputes Act, 1947. It was observed that the functions performed by the Committee were purely

religious.

(iii) A Division Bench of the Orissa High Court in Harihar Bahinipaty and Others Vs. State of Orissa, was also faced with the question whether the employees of the Shri Jagannath Temple Managing Committee form an industry within the meaning of the Industrial Disputes Act. It was held that Jagannath Temple is a spiritual institution with Lord Jagannath as the presiding Deity of the temple; the pilgrims visit the place for their spiritual benefit; the offerings that the pilgrims make to the deity are primarily by way of oblation to the deity although ultimately the offerings are sold to the public; that the predominant function of the temple was for spiritual benefit. Considered from all these aspects, it was held that Jagannath temple could not be an industry. It may be mentioned that the management of the Jagannath temple also under the Shri Jagannath Temple Act vested in the body constituted under the said Act. The Court held that institutions where spiritual rather than material needs were met / fulfilled could not be treated as an industry. It was further observed that a distinction has to be carved out of the need for maintenance of order, discipline, hygienic conditions and standard of cleanliness in such institution and if in aid thereof some systems were followed that alone would not make such an institution as an industry. Distinction was carved out between security personnel deployed for maintenance of law and order at public places and at such institutions. It was yet further held that when the main objective is spiritual, retaining the services of security personnel for keeping order and discipline and looking after the convenience of the pilgrims cannot convert such an institution into an industry.

(iv) The High Court of Kerala in K.C. Cherinjampatty Thampuratty Vs. State of Kerala and Others, held that a temple managed by the trustee would not fall within the definition of Section 2(j) of the I.D. Act and the dispute between the temple employee and the temple management is not an industrial dispute within the meaning of Section 2(k) of the Act. It was further observed that activities carried on in a temple are purely of a religious nature and the temple has to function in an atmosphere different from that of an industrial and commercial undertaking.

(v) Mention may also be made of The The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., though not concerned with I.D. Act but observing that tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day and that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or ablutions to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion only.

(vi) That brings us to Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, ; even while laying down the "Triple Test", of whether systematic activity is carried out, which is organized by co-operation between employer and employee and for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, it was clarified in the majority judgment authored by Krishna Iyer, J. that the test of production and / or distribution of goods and services calculated to satisfy human wants and wishes would exclude the activities which would be spiritual or religious. Chief Justice M.H. Beg who concurred with the majority judgment by penning down separate opinion also in no uncertain terms excluded such an activity by observing that the services which are rendered purely for the satisfaction of spiritual or psychological urges of persons would be excluded.

5. RSC is akin to religious or spiritual institutions discussed in judgments supra with which we concur and follow and which have never been considered an industry within the meaning of I.D. Act. By no means can activities of RSC be treated as activity which would be "res commercium". In fact Beg, C.J. in Bangalore Water-Supply & Sewerage Board (supra) had observed that the question of workmen of such religious and spiritual institutions raising disputes should not arise. It is rather unfortunate that the appellants have raised these disputes against the Committee managing and administering the Samadhi of the apostle of peace and harmony. The conclusion therefore is that the respondent is not an industry and the reference of the dispute raised by the appellants to the Industrial Adjudicator was not maintainable and bad in law. Axiomatically, the Award in favour of the appellants on the said reference cannot stand. We accordingly though for the reasons aforesaid concur with the judgment of the learned Single Judge and dismiss these appeals. No order as to costs.