
(1966) 09 CAL CK 0031
In the Calcutta High Court

Asiatic Society

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 16-09-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1967) 1 CALLT 22 : 71 CWN 119 : (1968) 2 ILR (Cal) 659 : (1967) 2 LLJ 318

Hon'ble Judges : B.C. Mitra, J

Bench : Single Bench

Judgement

B.C. Mitra, J.—In this application the petitioner seeks a writ in the nature of certiorari for quashing an order dated 28 June 1964, and also for an order prohibiting the respondents from implementing the said order dated 28 June 1964. There is a further prayer for a writ in the nature of mandamus relating to the same order.

2. The petitioner in this case is the Asiatic Society, which was registered as a society, under the Registration Act, 21 of 1860. The objects, functions and activities of the society have been set out in the rules and regulations of the society. The objects of the society as specified in the words of its founder, Sir William Jones, are:

The bounds of Its investigation will be the geographical limits of Asia, and within these limits its inquiries will be "extended to whatever IB performed by man. or produced by nature.

3. There are various regulations relating to the activities of the society, namely, regulations regarding guidance of research fellows of the society, regulations regarding general lectures, regulations regarding discussion indica, regulations regarding discussion meetings, regulations regarding debates, regulations regarding award of various medals and prizes, and various other regulations. It appears from the Bald, rules and regulations of the petitioners that the principal

functions and activities of the society may be broadly classified:

(1) Maintenance of a library for the convenience of research workers and Ors. intending to make use of the same.

(2) Conduct of research work by scholars, organizing lectures in both scientific and literary subjects, and publication of books dealing with literary, scientific, historical and geographical matters.

4. The petitioner has a little over fifty employees, and in 1963, there was a dispute between the petitioner and the said employee. This dispute was referred by respondent 1, by an order dated 23 December 1963, to respondent 2, for adjudication under the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Three issues were framed and referred to respondent 3, and these were:

(1) house-rent allowance,

(2) grades and scales of pay, and

(3) city compensatory allowance.

5. In the reference mentioned above, a written statement was filed by this petitioner in which it was contended that the petitioner was a well-known educational research institution, that it did not carry on an industry, trade or calling, that the employees of the petitioner were not workmen under the Act, and finally, that the reference was outside the scope and powers of respondent 1, and industrial adjudication on the said dispute was illegal and not maintainable.

6. The petitioner raised a preliminary objection on the question of jurisdiction of respondent 2, to deal with the said dispute between the petitioner and its workmen. Respondent 2 made an order on 28 June 1964, dealing with the preliminary objection raised by the petitioner that the reference was bad in law and not maintainable, and that respondent 2 had no Jurisdiction to make any adjudication on the reference. By the said order respondent 3 held that the petitioner did not impart education to anyone nor did it carry on the work of teaching. It was further held that although, scholarships were given to research fellows for conducting the research work, and lectures were arranged by the petitioner, it could not be held that the petitioner was an educational institution. In the view of respondent 2, the petitioner was a cultural institution, the aim of which was to promote the general knowledge of the people, by conducting research and by publishing various journals and books. Respondent 2 further went on to hold that the status of the petitioner might be equated to a hospital, and if a hospital was regarded as an "undertaking," the petitioner should also be regarded as an "undertaking" under the Act. It was finally held that the petitioner was in fact an undertaking within the meaning of Section 2(i) of the Act; and, that being so, the dispute between the petitioner and its employees was an industrial dispute and respondent 1 acted within its jurisdiction in making the reference. It is the order of respondent 2, which is the subject-matter of challenge in this petition.

7. Sri Subimal Roy. Learned Counsel for the petitioner, contended that, on a reference to the rules and regulations of the petitioner, there could be no doubt that the petitioner was engaged purely in educational and cultural activities. It was by no means carrying on a trade or an industry for profit or gain. Sri Roy argued that far from carrying on a trade for profit, the rules of the petitioners prohibited any trade, and in support of this contention he referred to Rule 14. This rule provides that an applicant for institutional membership shall give an undertaking that the institution concerned will not purchase any of the society publications for the purposes of trade and that it will abide by the rules and regulations of the society. Sri Roy argued that the entire range of activities of the petitioner was directed and confined to matters which were directly and entirely concerned with the advancement of learning and nothing else. He argued that nothing was produced by the petitioner by reason of co-operation between the employer and the employee nor was there any joint venture between capital and labour as in an ordinary industry. He further argued that there was an error of law apparent on the face of the record as respondent 2 had held, by the impugned order, that the petitioner was an undertaking within the meaning of the Act and the dispute raised by the petitioner was an industrial dispute. He also argued that respondent 2 had no jurisdiction to deal with the dispute between the petitioner and its employee, as, the dispute could by no means be said to be an industrial dispute within the meaning of the Act, nor could the employees be regarded as workmen under the said Act. He further argued that respondent 2 had assumed jurisdiction in a matter in which it had none, and that the reference itself was invalid as the dispute could not be an industrial dispute within the meaning of the Act.

8. In support of the above contentions, Sri Roy firstly referred to the decision of the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, in that case, it was held that the State carried on an undertaking within the meaning of Section 2(j) of the Act when it ran a group of hospitals for the purpose of giving medical relief to the citizens and for helping to impart medical education. It was held that the hospitals were "an industry" within the meaning of the Act. It was further held that it was difficult to state definitely the attributes, the presence of which would make an activity an undertaking within the meaning of Section 2(j) of the Act, but as a working principle it might be stated that an activity systematically or habitually undertaken for production or distribution of goods or for the rendering of material services to the community at large or a part thereof with the help of the employees was an undertaking. Such an undertaking, it was held, involved co-operation of the employer and the employees, and its object was the satisfaction of material human needs. Referring to this decision, Sri Roy submitted that applying the test laid down by the Supreme Court it could by no means be said that the petitioner was either an industry or an undertaking within the meaning of the Act. It was argued that there was no co-operation between the petitioner and its employees in any of the functions or activities of the petitioner, nor did

the petitioner systematically, habitually or at all engage itself in the production or distribution of goods. Finally, Sri Roy argued that the activities of the petitioner did not satisfy any material human need which was one of the tests Laid down by the Supreme Court in the decision mentioned above.

9. The next case relied upon by Sri Roy is also a decision of the Supreme Court in *Harinagar Cane Farm and Others Vs. State of Bihar and Others*, . In that case, it was held that in dealing with industrial matters, industrial adjudication should refrain from enunciating any general principles or adopting doctrinaire considerations such adjudication, it was held, should deal with problems as and when they arose and confine the decision to the point which strictly arose on the pleadings between the parties. Relying upon this decision, Sri Roy argued that respondent 2 should have confined itself to the facts pleaded and not proceeded to draw analogy between the petitioner and a hospital for the purpose of coming to the conclusion that the petitioner was an undertaking within the Act.

10. The next case relied upon by Sri Roy was the decision of the Supreme Court in *The National Union of Commercial Employees and Another Vs. M.R. Meher, Industrial Tribunal, Bombay and Others*, . In that case, the question was whether a solicitor's firm could be called an industry within the meaning of Section 2(j) of the Act. It was held that the concept of industry postulated partnership between capital and labour or between the employer and his employees, and that it was under this partnership that the employer contributed his capital, and the employees their labour, and the Joint contribution of capital and labour led directly to the production which the Industry had in view. It was further held that the co-operation between capital and labour or between the employer and his employees which was to be treated as a working test in determining whether any activity amounted to an industry was the co-operation which was directly involved in the production of goods or in the rendering of services. Dealing with the employment in a solicitor's firm, the Supreme Court held that a solicitor might employ a clerk because a clerk would type the opinion, and also menial servant to keep the solicitor's chamber clean, and it might be that the number of clerks would be large if the concern was prosperous, and so also the number of menial servants, but the work done by the typist or the stenographer or the menial servant, or other employees in a solicitor's firm was not directly concerned with the services which the solicitor rendered to his clients, and could not, therefore, be said to satisfy the test of co-operation between the employer and the employees, which was relevant to the purpose. Relying upon this decision, Sri Roy argued that in the instant case there was neither co-operation between capital and labour nor between the employer and the employee. The employees of the petitioner might be engaged in keeping the premises of the petitioner clean, and Ors. might also similarly be engaged in rendering one or other kind of assistance to the petitioner in its functions, but such services were not strictly connected with the object end activities of the petitioner, which was advancement of learning, promotion of research, and investigation into matters of historical, geographical, literary and scientific Interest. In the pursuit of these

objects, Sri Roy argued, the employees of the petitioner had nothing whatsoever to do, and the services rendered by the employees did not by any means help the petitioner in the pursuit or fulfilment of its objects.

11. Sri Roy next referred to the decision of the Supreme Court in *The Ahmedabad Textile Industry's Research Association Vs. The State of Bombay and Others*, . In that case, It was held that it could be stated as a working principle, that the manner in which the activity of an institution was organized or arranged, the condition of co-operation between the employer and the employees necessary for its success and its object to render material services to the community could be regarded as some" of the features which were distinctive of activities to which Section 2(i) of the Act applied. Applying these tests it was held that the Ahmedabad Textile Industry's Research Association carried on an activity which clearly came within the definition of the word "Industry" in Section 2(j) of the Act and which could not be assimilated to a purely educational Institution, and therefore, when a dispute arose between It and some of Its employees, it was an Industrial dispute, which could properly be the subject of a reference for adjudication under the Act. In that case, the association was founded with the object of establishing a textile research institute for carrying on research and other scientific work in connexion with textile trade and Industry, and other trades and Industries allied therewith or necessary thereto. Sir Roy argued that the activities of the "research association having been directed to the aid of trade and industry, it was held that the association was an industry and a dispute between it and its employees was an industrial dispute within the Act.

12. The next case relied upon by Sri Roy was the decision of the Supreme Court in *University of Delhi and Another Vs. Ram Nath*, . In that case, there was a dispute between Delhi University and two of its employees. One of the employees was employed as a driver, whose service was terminated by a notice, on payment of one month's salary In advance, in lieu of notice. There was a reference to a tribunal and it was contended on behalf of the university that it was not an employer under the Act and the work carried on by it was not an Industry u/s 2(j). The tribunal had rejected a preliminary objection and having considered the merits passed an order In favour of the employees directing the employer to pay Rs. 1,050 to each of the employees as retrenchment compensation, It was contended before the Supreme Court that the work carried on by the University of Delhi was not an industry. It was held that the main function of an educational institution was to Impart education to students, and that if it was held that Imparting education was an industry with regard to which the educational institution was an employer, it must follow that teachers, who co-operated with the institution and assisted with their labour in imparting education, were the employees of the institution, and, therefore, the teachers would be employees and entitled to the benefits of the Act. It was further held that the omission of the whole class of teachers from the definition in Section 2(s) was significant, and that it could not have been the policy of the Act that

education should be treated as an Industry for the benefit of a very minor and insignificant number of persons who might be employed by educational Institutions. It was held at p. 338:

... Reading Sections 2(o), 2(o); and 2(o) together, we are inclined to hold that the work of education carried on by educational institutions like the University of Delhi is not an industry within the meaning of the Act.

Having reached this conclusion, it may be legitimate to observe that it is not surprising that the Act should have excluded education from its scope, because the distinctive purpose and object of education would make it very difficult to assimilate it to the position of any trade, business or calling or service within the meaning of Section 2(j). Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development. To speak of this educational process in terms of industry sounds so completely incongruous that one is not surprised that the Act has deliberately so defined workmen u/s 2(s) as to exclude teachers from its scope ...

Sri Roy strongly relied upon these observations of the Supreme Court in support of his contention that the petitioner could not be treated as an industry and its employees could not be treated as workmen under the Act either. He argued that as in the case of the University of Delhi, which was engaged in imparting education, the petitioner was similarly engaged in the advancement of learning, by various means discussed earlier in this judgment, and there was complete lack of co-operation either between the employer and the employee or between any capital or labour. The whole object of the petitioner was advancement of learning by awarding scholarships, promoting research, organizing lectures and maintaining a laboratory for the facility and benefit of scholars. The petitioner could not, therefore, it was argued, be treated as an industry nor could its employees be treated as workmen within the meaning of the Act.

13. The next case relied upon by Sri Roy was a decision of this Court in *Brahmo Samaj Educational Society v. West Bengal College Employees' Association* 1964 I L.L.J. 326. In that case, it was held that colleges did not carry on industrial activities and were not Industries and a dispute between colleges and their workmen did not constitute an industrial dispute and a tribunal had no jurisdiction to entertain such a dispute.

14. Appearing for respondent 3, Sri Kashi Kanto Moitra, on the other hand, contended that the petitioner must be treated as an industry and its employees should be treated as workmen within the meaning of the Act. He argued that the petitioner published and sold books at a profit, although he frankly conceded that the petitioner did not maintain a press for the purpose of printing the books. He further argued that the petitioner paid handsome remuneration to authors who published their books through the petitioner. The employees of the petitioner played a very large part in the publication and sale of books. It was, therefore, argued that although the petitioner had as its objects various activities related

with the advancement of learning and education, it must be held that the petitioner was carrying on an industry having regard to its other activities, namely, publication and sale of books.

15. It was next argued that the petitioner undoubtedly was rendering some kind of service, although it was not engaged in any trade or industry for profit. In this service that the petitioner rendered to the intellectual public, the employees of the petitioner played a very important role and, therefore, they must be regarded as workmen under the Act and the dispute should be regarded as an industrial dispute. In support of this contention, reliance was placed by Sri Moitra on the decision of the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, . In that case, the State was running several hospitals for the purpose of giving medical relief, and also to impart medical education and it was held that the State was carrying on an undertaking within the meaning of S, 2 (j) of the Act. It was argued that although hospitals imparted medical education, yet it was held to be an undertaking u/s 2(j) of the Act. Therefore, Sri Moitra argued that, even assuming that the petitioner was engaged in the advancement of learning, it should still be regarded as an undertaking within the meaning of Section 2(j) of the Act, as the petitioner was rendering some kind of service to a part of the community with the help of the employees. Without a doubt, Sri Moitra argued, there was co-operation between the petitioner and its employees, if not in any other matter, at least in the matter of publication and sale of books which formed an important branch of the petitioner's activities.

16. The next case relied upon by Sri Moitra is a decision of this Court in *Bengal Club, Ltd. v. Santi Ranjan Somaddar* 1957 I L.L.J. 605. In that case, it was held that the Bengal Club, Ltd., maintained a club for the benefit of its members and it carried on an industry within the meaning of the Act. It was held that such clubs provided facilities for members, and amongst other things they carried on a big catering business and also a business in sale of licensed alcohol. These clubs, it was held, provided food and drink, and might provide accommodation and, therefore, such clubs carried on a business very similar to the business carried on by a licensed hotel, or eating-house, and that being so, such a club should be regarded as an Industry as defined in the Act, and a dispute between the club and its workmen would be an Industrial dispute. This case, in my view, is of no assistance to Sri Moitra because, on the facts, admittedly the club was held to carry on a business similar to that of a hotel. The next case on which Sri Moitra relied was the decision of the Supreme Court in *The National Union of Commercial Employees and Another Vs. M.R. Meher*, Industrial Tribunal, Bombay and Others, , which I have already discussed earlier in this Judgment. Sri Moitra argued that a solicitor's firm was held not to be an Industry because the service rendered by the employees of such a firm was held to be purely of an incidental type and which was intended to assist the solicitor in doing his job. The next case relied upon by Sri Moitra was a decision of the Supreme Court in *Lalit Hari Ayurvedic College Pharmacy v. their workers' union* 1960 I L.L.J. 260. In that

case, an Ayurvedic College Pharmacy manufactured medicines, primarily for sale in the market, although about 30 per cent of the medicines manufactured was consumed in the hospital conducted by the manufacturer, and it was found that the pharmacy and the hospital were not run for the benefit of the students in the college. On these facts, it was held that the activity of the college in running the pharmacy and the hospital was an undertaking u/s 2(j) and was an industry. This case, in my view, also is of no assistance because admittedly the college authorities were engaged in manufacturing medicines, a substantial part of which was sold as a trade or business and the pharmacy and the hospital were found not to have been run for the benefit of the students of the college. This case, therefore, in my view, is of no assistance to Sri Moitra's clients.

17. Sri Moitra argued that the decision of the Supreme Court in *University of Delhi and Another Vs. Ram Nath*, was no assistance to the petitioner as the petitioner was not engaged in Imparting education, like the University of Delhi, and, therefore, it could not be said that it was an educational institution for that reason it could not be held to be an industry. Imparting of education was no part of the objects or activities of the petitioner and, therefore, the decision of the Supreme Court in *University of Delhi and Another Vs. Ram Nath*, was of no assistance to the petitioner.

18. It was next argued that the petitioner was engaged in investment of its savings in Government securities, and, therefore, it carried on a business as it earned interest on such, Investments. Sri Moitra argued that as the petitioner was carrying on the business of investment, it must be held to be engaged in a trade and, therefore, should be held to be an industry.

19. The question before me is whether having regard to the objects and activities of the petitioner, as set out in the rules and regulations, to which I have referred earlier in this Judgment, it can be regarded as an undertaking within the meaning of Section 2(j) of the Act. The main purpose, object and function of the petitioner, in my view, are the advancement of learning and investigation into matters of literary, scientific and artistic interest. It is true that the petitioner publishes and sells books. It is also true that the petitioner employs a little over fifty persons in order to enable it to carry on its activities. It is also true that some of these employees at any rate, render some kind of assistance in the publication and the sale of the books of the petitioner. But the question is Can it be said that because the petitioner publishes and sells some books, such publication and sale of books and other works of literary or scientific interest forms the main or even an integral part of the petitioner's objects and activities ? Can it be said in the facts of this case that the petitioner is engaged in a trade or an industry for the purpose of profit or gain? Can it again be said that there is co-operation between the employer and the employees in the pursuit and fulfilment of the objects set out in the rules and regulations of the company? Can it further be said that there is co-operation between labour and capital in production of goods and materials to satisfy the demands of the public

or at any rate a section of the public? In my view, the answer to all these questions must be in the negative. The petitioner can by no manner of means be said to be carrying on any activity other the advancement of learning; the res judication and sale of books of scientific, literary or artistic interest must be held to be incidental and ancillary to the main object of the petitioner, which, as I have held, is the advancement of learning. As the University of Delhi has been held by the Supreme Court not to be an industry, the grounds for holding that the petitioner is not an industry or undertaking are, in my view, much stronger than the grounds on which the University of Delhi was held not to be an industry. It is true that the petitioner does not impart education to pupils or students in the manner in which an university imparts such, education. But, can it be said that imparting of education in the manner in which it is imparted in educational institution is the only means of spreading education and learning? I think not. Education and learning can be spread not only by imparting education in the cloistered seclusion of the class-rooms, but also by providing facilities for research, by publishing learned papers on artistic and scientific subjects, by organizing lectures and by publishing books and other literature on subjects of scientific and artistic interest. These are as good methods of spreading education and learning as imparting of education in class-rooms in colleges and universities. In that view of the matter, the position of the petitioner must be equated to that of a university or any other institution which is purely devoted to the object of education and learning.

20. To hold that the petitioner is an undertaking or an industry or that its main object is publication and sale of books, though at a profit, would be negation of all that has been said by the Supreme Court in *University of Delhi and Another Vs. Ram Nath*, .

21. I cannot, for the reason mentioned above, accept Sri Moitra's contentions that the petitioner should be held to be an industry or an undertaking within the Act or that the employees of the petitioner should be regarded as workmen or that the dispute between the petitioner and its employees should be regarded as an industrial dispute which could form the basis of a valid reference followed by an adjudication by an industrial tribunal.

22. In that view of the matter, this application must succeed. The rule is made absolute. Let a writ of certiorari issue for quashing the order dated 28 June 1984, made by respondent 2 and also the order dated 23 December 1963 made by respondent 1. There will be an order prohibiting the respondents from implementing the said order dated 28 June 1964 and the order dated 23 December 1963. Let a writ in the nature of mandamus issue directing respondent 1 to recall and revoke the order dated 23 December 1933. There will be no order as to costs.