
(2008) 01 JH CK 0064
In the Jharkhand High Court

Asit Baran Modak

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2

Citation : (2008) 2 LLJ 550 : (2008) 116 FLR 709 : (2008) 3 JCR 324

Hon'ble Judges : M. Karpaga Vinayagam, C.J.; D.K. Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M. Karpaga Vinayagam, C.J.—Asit Baran Modak, the petitioner herein, claiming that he was working as a workman in the Deoghar Satsangh, the respondent herein, on being aggrieved over his termination, raised an industrial dispute, which was referred to the Labour Court, Deoghar for adjudication. By the award dated October 6, 2001, the Labour Court rejected the claim of the petitioner holding that it is not an industrial dispute as the respondent is not an industry as defined under the Industrial Disputes Act. Challenging the same, petitioner has filed this writ petition.

2. The terms of reference which was framed by the Labour Court is as follows:

(i) Does Deoghar Satsangh come under the definition of Industry as per the Industrial Disputes Act?

(ii) If yes, whether the termination of service of Asit Baran Modak is justified?

(iii) If not, whether Modak is entitled to reinstatement or compensation?

3. According to the petitioner, he was appointed as a Clerk in the year 1967 by Satsangh and was dismissed from the service on November 11, 1990 without any reason.

4. According to the management, the respondent herein, the Satsangh does not

come within the definition of Industry as per the Industrial Disputes Act, 1947 as there is no relationship of employer and employee between the Satsangh and the petitioner and, therefore, the claim of the petitioner is not maintainable under the Industrial Disputes Act.

5. On behalf of the workman, 7 witnesses were examined. On the side of the management, 5 witnesses were examined. Through their respective witnesses, several documents had been filed by both the parties. The Labour Court, after considering the oral and documentary evidence adduced by both the parties passed an award concluding that the petitioner workman failed to establish that Satsangh is an industry and hence he is not entitled to claim the benefit under the Industrial Disputes Act. Aggrieved by the same, the petitioner has filed this writ.

6. Satish Bakshi, learned Counsel appearing for the petitioner challenging the said finding, would submit that the Labour Court failed to consider the evidence in the proper perspective and failed to take into consideration the ratio decided by the Supreme Court in the Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, and as such the award is not legal.

7. It is also contended by the counsel for the petitioner that the Hon"ble Supreme Court classified charitable institutions into three categories and concluded that the first two categories of charitable Institutions would be covered by the definition of industry and only the third category would go out of its coverage and the respondent in question would fall in first and second category satisfying the ingredients of industry, which are reflected in the documents produced by the workman which the Labour Court had failed to appreciate the same by proper application of mind.

8. Refuting this contention, the learned Counsel for the respondent would contend that the Labour Court in its award had elaborately dealt with each and every document produced by the petitioner and gave reasons for rejecting those documents on the ground that those documents have no relevance and further those documents cannot be relied upon as those documents were not issued by the management, the Satsangh and the Labour Court further held in the award that the documents produced by the management, the Satsangh would prove that the persons working in Satsangh were not workmen and they were all devotees, and they were given only the subsistence allowance as they were working out of their own free will and out of charity and hence the factual finding given by the Labour Court through its award that the petitioner is not a workman cannot be said to be perverse so as to interfere by invoking Article 226 of the Constitution of India.

9. We have heard the counsel for the parties and carefully considered their respective submissions.

10. At the outset, it shall be stated that both the counsel placed reliance upon Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, to

substantiate their respective pleas.

11. Let us give the crux of the observations and guidelines made by the Supreme Court in Bangalore Water Supply case:

(i) The question is "whether charitable institutions are industries?" This paradox can be unlocked only by examining the nature of the activity of the charitable institution. Bedrocked on the ground norms, we must analyse the elements of charitable economic enterprises, established and maintained for satisfying human wants.

(ii) There are three broad categories—the first is one where the enterprise like any other; yields profits, but they are siphoned off for altruistic objects; the second is one where the institution makes no profit but hires the services of employees as in other like businesses but the goods and services, which are the output, are made available, at low or no cost, to the indigent needy who are priced out of the market; the third is where the establishment is oriented on a humane mission fulfilled by men who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution. The first two categories are industries; the third category is not an industry.

(iii) All industries are organized, systematic activity. Charitable adventures which do not possess this feature, of course, are not industries.

(iv) If a business is run for production and/or supply of goods and services with an eye on profit, it is plainly an industry.

(v) The fact that the whole or substantial part of the profits so earned is diverted for purely charitable purposes does not affect the nature of the economic activity which involves the co-operation of employer and employee and results in the production of goods and services.

These industries will come in the first category.

(vi) If a kind-hearted businessman or high-minded industrialist or service-minded operator hires employees like his non-philanthropic counterparts and in co-operation with them produces and supplies goods or services to the lowly and the lost, the needy and the ailing without charging them any price or receiving a negligible return, people regard him as of charitable disposition and his enterprise as a charity. But then so far as the workmen are concerned, it boots little whether he makes available the products free to the poor. They contribute labour in return for wages and conditions of service. For them the charitable employer is exactly like a commercial-minded employer.

(vii) The beneficiaries of the employer's charity are the indigent consumers. Industrial law does not take note of such extraneous factors but regulates industrial relations between employers and employees, employers and workmen and workmen and workmen. From the point of view of the workmen, there is no

charity. From these strands of thought flows the conclusion that the second group may legitimately and legally be described as industry.

(viii) What is the third category? - If a philanthropic devotion is the basis for the; charitable foundation or establishment, the institution is headed by one who wholeheartedly dedicates himself for the mission and pursues it with passion, attracts others into the institution, not for wages but for; sharing in the cause and its fulfilment, then the undertaking is not industrial.

(ix) In one sense, there are no employers and employees but crusaders all. In another sense, there is no wage basis for the-employment but voluntary participation in the production, inspired by lofty ideals and unmindful of-remuneration, service conditions and the like.

(x) If there is a band of disciples, devotees or priestly subordinates in the order, gathered together for prayers, ascetic practices, bhajans, meditation and worship and outsiders are also invited daily or occasionally, to share in the, spiritual proceedings and all the inmates of the Ashram and the members of the institution, invitees, guests and other outside participants are fed, accommodated and looked after by the institution. The service, rendered to them by the; Ashram is as devotees. They may affectionately look after the guests and take care of them and all this they may do not for wages, but for the chance to propitiate the Master, work selflessly and acquire spiritual grace. It may be that they take some small pocket money from the donations received by the institution. There may be a few scavengers and servants, a part-time auditor or accountant employed on wages. If the substantial number of participants in making available the goods and services, if the substantive nature of the work is rendered by voluntary wageless sishyas, it is impossible to designate the Ashram as an industry. The reason is that in the crucial, substantial and substantive aspects of institutional life the nature of the relations between the participants is non-industrial.

(xi) We must look at the predominant character of the institution and the nature of the relations resulting in the production of goods and services. Stray wage earning employees do not shape the soul of an institution into an industry.

(xii) If in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired.

12. On the basis of the above guidelines given in the Bangalore Water Supply case, there are so many decisions rendered by the Supreme Court as well as High Courts later on, as referred to by the counsel for the parties.

- (i) Bihar Relief Committee Vs. State of Bihar and Others,
- (ii) Shri Cutchi Visa Oswal Derawasi Jain Mahajan Vs. B.D. Borude, I.T. Maharashtra and others,
- (iii) Workmen of Baikuntha Nath Debasthan Trust Vs. State of West Bengal and Others,
- (iv) Radhasoami Satsang Sabha Vs. Rashtriya Mazdoor Congress and Others,
- (v) Physical Research Laboratory Vs. K.G. Sharma,
- (vi) Shri Gajanan Maharaj Sansthan, Shegaon, Buldhana Vs. Industrial Tribunal, Amravati and Others,
- (vii) Commissioner of Sales Tax Vs. Sai Publication Fund,
- (viii) Ramesh Baruah v. Presiding Officer, Labour Court of Assam 2004 IV LLJ 215(NOC)(Gau)

13. Now let us see whether the Satsangh comes under Category 1 and 2 which attracts the definition of Industry" or Category 3 which is not covered under the definition.

14. As indicated above, both the parties produced oral evidence as well as documentary evidence before the Labour Court. According to Satsangh it is a society registered under the Societies Registration Act and is governed by the objects incorporated in the Articles of Association. The memorandum of Association of Satsangh (Exhibit "F") would provide for the object that this is a public religious and charitable institution for help and service to the humanity at large without discrimination on the principles of Anukul Chandra. Petitioner is one of the disciples of spiritual Guru rendering voluntary service of his own accord to the spiritual Guru of the Satsangh. There is no relationship of any employer and employee ever created between the petitioner and the Satsangh. Satsangh prints and publishes books on the philosophy of spiritual Gurus and prepares medicines on the formulation Prescribed by Gurus and runs a charitable hospital and the objective of Satsangh is on a no profit basis. To establish this, five witnesses were examined and documents exhibited vide Exhibit "A" series to Exhibit "L" series and were marked.

15. On the side of the petitioner 7 witnesses were examined and Exhibits 1 to 8 were marked.

16. The main contention urged by the counsel for the petitioner is that some of the documents produced by the petitioner-workman have not been considered and some of them have not been properly appreciated by the Labour Court.

17. On careful perusal of the award, it is evident that no document has been overlooked by the Labour Court. On the other hand, some of the documents were found to be issued by some person or other who has no connection with the Satsangh. Admittedly no document was produced by the petitioner in relation to

his appointment in 1967 and there is no direct material to show that he was given wages or salary for any period. The main important document, which has been produced by the Satsangh Charitable institution is a Sankalpa Patra which has been signed by the petitioner himself. This document would show that the petitioner, being a disciple, signed the Sankalpa Patra as he was desirous of rendering voluntary service to the Satsangh and he expressed his willingness to render voluntary service; and also to get subsistence allowance. It is not denied by the petitioner that this document was signed by him. On the other hand, as indicated above, no documents had been produced by the petitioner to show that any salary or wages have been disbursed either to the petitioner or others. On the other hand, the 5 witnesses examined by the Satsangh, the charitable institution would, all, uniformly, speak that they were all the disciple, working in the Satsangh and nobody was appointed for any job and there was no employee and employer relationship in the institution.

18. It cannot be disputed that award was passed by the Labour Court after giving full opportunity to both the parties to adduce their evidence. After evaluating the evidence, oral and documentary, produced by both the parties, the Labour Court discussed various aspects of the oral and documentary evidence and gave a factual finding that it was not established that Satsangh is an industry. Admittedly, no proof or receipt of salary or wages or record of appointment or engagement for the period was produced by the petitioner before the Labour Court.

19. It is settled law that initial burden of establishing that he is a workman working in an industry lies upon the petitioner.

20. From the award it does not appear, as indicated above, that the petitioner adduced any evidence in support of his contention that he was appointed as a Clerk in the year 1967 and he was collecting wages or drawing salary from Satsangh. To substantiate his oral evidence relating to his claim as a workman, he never produced any document from his side nor summoned any document from the respondent. On the other hand, a vital document has been produced by the Satsangh to show that he has signed the Sankalpa Patra expressing his willingness for voluntary service as a disciple in Satsangh and this has not been disputed by the petitioner.

21. In the light of the said fact situation the Labour Court has drawn conclusion that the claim of the petitioner that he is a workman in an industry has not been established. In this context, let us refer to the various findings which have been given by the Labour Court:

- (i) The documents exhibited by the petitioner shows that none of the disciples in Satsangh perform their duty in the spirit of employer and employee relationship,
- (ii) The documents exhibited by the petitioner show that no salary was ever paid by Satsangh to the petitioner,

(iii) The documents marked as Exhibits 3/6 to 3/10 produced by the petitioner did not corroborate the fact that the petitioner used to receive salary from Satsangh.

(iv) No document is produced by the petitioner to show that his appointment was made by Satsangh through some letter or order,

(v) The Satsangh Witness No. 1, Samir Banerjee produced documents marked Exhibit C/1, the Sankalpa Patra contains the declaration of the petitioner which shows that the petitioner had pledged in the Sankalpa Patra that he would render voluntary service to the Satsangh out of his devotional urge towards Satsangh.

(vi) The documents exhibited as Exhibits "T", "K" and "L" are certificates issued by Income Tax Authorities showing that the donation received by the Satsangh are exempted from Income Tax. This will prove that Satsangh is a public religious institution and not an industry,

(vii) Satsangh has no source of income except through "Ista Briti", i.e., donation from disciples,

(viii) The documents show that the petitioner, his father and grand-father are all disciples of Satsangh.

(ix) When services rendered by the disciples to themselves or others out of missionary zeal and purely charitable motive, the said disciple cannot be permitted to claim that he is a workman and as such he can invoke the provisions of Industrial Disputes Act.

22. These findings, in our view, cannot be said to be without any basis. Though some of the documents would show that the petitioner's father was working as a Clerk for some period, those documents have not been admitted to be the genuine documents issued by Satsangh. On the other hand, the Sankalpa Patra which has been signed by the petitioner as disciple has been marked through the Satsangh witnesses, the genuineness of which is not disputed as indicated above.

23. The main ingredient as mentioned in the definition of industry as incorporated u/s 2(j) of the Industrial Disputes Act is a business activity or trade activity. It is for the petitioner, who claims himself as a workman, to establish that a business activity or trade activity was going on. The documents filed by the Satsangh and the objects contained in the Memorandum of Association would not indicate any business activity being carried on and on the other hand, the persons who worked were rendering their voluntary or self-less service for the institution, Ashrama as disciples and as such they cannot approach the Labour Court by invoking the provisions of Industrial Disputes Act.

24. Let us now refer to gist or the discussions made by the Labour Court with reference to various exhibits filed on behalf of the petitioner which is as follows:

(i) Exhibit 1 and Exhibit 1-A produced by the petitioner are receipts issued by the School, they are not school fee receipts, but receipts for donations that was

given to the Satsangh. (ii) Exhibits 2 and 2-A, the letters, sent by the applicant to the Deputy Commissioner, Deoghar, do not give any proof in support of his plea.

(iii) Exhibit 3 and Exhibit 3-1, the letters issued by the Assistant Secretary informing the applicant that he has been stopped from work on the ground of bad behaviour and antecedent and he would continue to get monthly maintenance as before even without doing any work. This letter clarifies that every person who works in Satsangh only gets subsistence allowance and not any salary.

(iv) Exhibit 3/1 has no relevance as the said certificate does not bear the signature and stamp of the Secretary of the Satsangh, the certificate also was not issued to the applicant.

(v) Exhibit 3/2 also is not relevant to this case as the certificate does not contain stamp or signature of any officer of the Satsangh.

(vi) Exhibit 3/3 does not give any evidence supporting the plea of the applicant-petitioner.

(vii) Exhibit 3/4 is not relevant to this case as the said certificate was issued in the name of the grand-father of the petitioner,

(viii) Exhibit 3/4 is also not relevant as it has no reference about the Satsangh.

(ix) Exhibit 3/5 is the letter of the petitioner to the Satsangh asking for reasons for removing him without any charge.

(x) Exhibit 3/5 was the money receipt of Rs. 360/- that was paid to the petitioner that does not show salary or wages.

(xi) Exhibits 3/6 to 3/10 which show that Rs. 200/- was paid to the applicant would not indicate that the same was paid as a wages. Further they did not contain the signature of any officer of the Satsangh.

(xii) Exhibit 6/1 are receipts which have no relevance

25. Let us now see the gist of the discussion with reference to the documents produced by the Satsangh which is as follows:

(i) The letter of resolution, exhibit C/1 would indicate that all those who work out of their own free will in Satsangh have filled up the letter of resolution. This was signed by the petitioner also,

(ii) The signature was identified by the Satsangh Witness No. 1 Samir Banerjee.

(iii) This Exhibit C1 makes it clear that the petitioner also worked in the Satsangh out of the feeling of devotion,

(iv) The Satsangh witness also proved the letter dated November 11, 1991, signed by the Assistant Secretary, K.C. Saha, marked as Exhibit "E".

(v) Exhibit G contains statutes and regulations.

(vi) Exhibit H is the Entry No. 22 of the Memorandum of Association,

(vii) Exhibit I is the Certificate from which it is clear that the Satsangh is the Society registered under the Societies Registration Act which clarifies that the Satsangh is an institution and not an industry,

(viii) Exhibits "J", "K" and "L" are the certificates issued by the Income Tax Officer, which show that the income was from donation and exempted from Income Tax.

26. Let us now see the discussion made by the Labour Court evaluating the evidence of the each witness. The discussions made by the Labour Court with reference to witnesses examined on behalf of the workman are as follows:

(i) The Workman Witness No. 1 Shankar Pandey and Workman Witness No. 2 Priya Nath Das both have admitted that thousands of devotees used to come to the institution and they get their free meal at Anand Bazar. They i admit that the petitioner did not take any monthly salary.

(ii) The petitioner examined himself as Workman Witness No. 3. He admitted that he used to get maintenance allowance and he did not receive any appointment or discharge letter.

(iii) People working at Satsangh only get maintenance relief.

(iv) Workman Witness No. 4 cited by the petitioner admitted that the 1 petitioner did not get any wages or salary.

(v) Workman Witness No. 5 Bhola Nath Bhadra has stated that the Satsangh is a religious institution.

(vi) Workman Witness No. 6 Aparna Modak stated that the Satsangh is a religious institution and no appointment letter is issued to any one.

(vii) Workman Witness No. 7 Arun Dhati Modak has stated that the applicant was getting maintenance relief.

27. The discussions of the Labour Court with reference to the witnesses examined on behalf of the Satsangh:

(i) Satsangh Witness No. 1 stated that even before 1977 nobody was getting any wages and Satsangh has no other source of income other than donation.

(ii) Satsangh Witness No. 2 stated that the expenditure of the Satsangh is met by the money sent to it by its devotees, religious work is carried out at Satsangh free treatment is given at the hospital. Nobody is employed at Satsangh.

(iii) Satsangh Witness No. 3 has stated that the Satsangh is not an industry, he gets blessings at Satsangh and no substantial amount is received by him as blessings.

(iv) Satsangh Witness No. 4 stated that the Satsangh is a charitable institution.

(v) Satsangh Witness No. 5 Radhe Krishna Lal has stated that provision is made for maintenance of people at Satsangh. There is no officer at Satsangh. Everybody is devotee. There is no office register at Satsangh. Everybody at Satsangh is devotee, who work out of their own freewill.

28. The above paragraphs would indicate that the Labour Court had evaluated each and every material produced by both the parties and set up discussion over oral and documentary evidence. Such being the situation, it is not correct to contend on the part of the counsel for the petitioner that some of the document have not been considered and some of the documents have not been appreciated in the proper perspective,

29. It is settled law that scope under Article 226 of the Constitution of India is very limited and it cannot be invoked to interfere with the factual finding which has been rendered by the Labour Court on the basis of the materials available on record.

30. Admittedly, there are no materials that any business or trade is carried on in the Satsangh. On the other hand the Satsangh is a religious, social, charitable organization, which is established to propagate the teaching of the Guru. There is no business activity or trade activity. The Memorandum of Association and other documents would show that Satsangh is a Society registered under the Societies Registration Act and the object of the Satsangh which is a public religious and charitable institution is to help and serve the society at large without discrimination on the principles of Anukul Chandra, the Guru.

31. As discussed above, the Sankalpa Patra, which was one of the documents produced by the Satsangh was signed by the petitioner as a disciple of spiritual Guru expressing willingness to render voluntary service of his own accord to the spiritual Guru of Satsangh.

32. The documents produced by the Satsangh, as correctly concluded by the Labour Court, that Satsangh prints and publishes books on the philosophy of spiritual Guru and prepares medicine and formulation on as prescribed by Guru and runs a charitable organization without any profit basis. In other words, the activity relating to running of the printing press, charitable hospital are undertaken by Satsangh without violating the objects of Satsangh on a no profit basis. When services are rendered by the group of charitable individuals of themselves or others at the charitable motive, there would hardly be any need to invoke the provisions of Industrial Disputes Act to protect them.

33. The services rendered to the Society by the Satsangh through its activities of whom the petitioner is one amongst them. The predominant Character of the institution is the service to the society in the name of Guru As pointed out by Supreme Court, if in a pious or altruistic mission many employ themselves free or for small honoraria, mainly drawn by sharing in the purpose or cause, then it

cannot be said the services rendered by the disciples who are not engaged for remuneration and was not on the basis of master and servant) relationship, the institution cannot be called as an industry.

34. The sole object of the Satsangh is to spread the message of their Guru. The main activity through the printing books and literature and distributing at the cost price is to spread the message to Society. This main activity does not amount to trade or business.

35. The activity of publishing and selling literature books or preparation under the formulas enunciated by the Guru is obviously incidental or ancillary to the main activity of spreading message of Anukul Chandra, their Guru and not to do any business.

36. The Memorandum of Association and the objects contained therein would make it clear that Satsangh was not established with an intention of carrying on the business of selling or supplying goods.

37. This being the position, it cannot be said that the Satsangh carries out the business of selling and supplying goods so as to fall within the definition of Industry.

38. The workman, the petitioner herein can succeed in demonstrating that the Satsangh is an industry only if he establishes that the Satsangh indulges in a number of activities including the activities which fall within the category of industry. Further the workman shall have to establish that the activities which are not exempt, predominate the activities which are exempt within the purview, of Section 2(j) of the Act. As held by the Labour Court, this has not been established.

39. When there are sufficient materials produced by Satsangh to show that it comes under category 3, which would not cover the definition of "industry", there, is no reason to hold that the factual finding given by the Labour Court is wrong.

40. Under these circumstances, this Court is constrained to hold that the findings rendered by the Labour Court do not suffer from any infirmity as they are in consonance with the ratio decided by the Supreme Court in Bangalore Water Supply case, and, therefore, they are liable to be confirmed.

41. Accordingly, the writ petition is dismissed as devoid of merit. However, there is no order as to cost.