
(1959) 06 CAL CK 0012
In the Calcutta High Court

Brahmo Samaj Education Society and Others	APPELLANT
Vs	
West Bengal College Employees" Association and Others	RESPONDENT

Date of Decision : 19-06-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2

Citation : 64 CWN 191 : (1960) 1 LLJ 472

Hon'ble Judges : Sinha, J

Bench : Single Bench

Judgement

Sinha, J.—There are before me in this application four petitioners. The petitioner 113 the Brahmo Samaj Education Society, a society registered under the Societies Registration Act. The petitioner 2 is the secretary of the said society. The petitioner 3 is the City College (General) situated at 102/1, Amherst Street, Calcutta, and the petitioner 4 is the City College (Commerce) situated at 13, Mirzapur Street, now 13 Surya Sen Street, Calcutta, On 22 August 1958 the Government of West Bengal, in exercise of powers conferred upon it by Section 10 of the Industrial Disputes Act, 1947 referred an industrial dispute, alleged to exist between the colleges named in the list attached to the order of reference and their non-teaching staff represented by West Bengal College Employees" Association, relating to the issues mentioned therein. The colleges mentioned were the City College (General) and the City College (Commerce) being the petitioners 3 and 4. The disputes that were referred for adjudication before the fourth industrial tribunal were related to fixation of grades and scales of pay of different categories of employees, dearness allowance, house allowance, holidays, duty hours and provident fund. On 8 September 1958 the two colleges received two notices from the chairman of the fourth industrial tribunal whereby they were Informed that the hearing of the disputes will take place on 16 September 1958. The petitioners 3 and 4 took the objection that the alleged disputes were not "industrial disputes" within the meaning of the expression as used under the Industrial Disputes Act, 1947. As the tribunal did not allow this objection, this rule has been taken out. Originally, in this application only the two

colleges were made parties as the petitioners. Subsequently, the petition has been amended by putting in the Brahmo Samaj Education Society and its secretary as the petitioners 1 and 2. The ground made out is that the "petitioner," without stating which of the petitioners is meant thereby, was purely an educational institution, with the main object of promoting and developing educational services in Calcutta and that it was not an "industry" under the Industrial Disputes Act and that the disputes referred were not between the employer and employees. In order to understand this petition, it is necessary to investigate into the nature, origin and constitution of the two colleges mentioned above. In the University of Calcutta Calendar it will be found that there is only one affiliated institution, namely, City College, Calcutta. Under the heading "General Department," a short history is given of its establishment and development. It is stated that the institution owed its origin to a widespread education movement in Bengal towards the later part of the nineteenth century. The City College was first started as a high school by the late Ananda Mohan Bose, on 16 January 1879 in collaboration with two other illustrious figures, Pandit Sibnath Sastri and Surendra Nath Banerjee. B.A. Classes were opened in 1881 and B.A. classes in 1884. Thus, the school developed into a first-grade college within a comparatively short period of five years of its establishment. It was found necessary to erect a building for the college at 13, Mirzapur Street. The college was opened in December 1884. In 1888, it was made over to a body of trustees by the founder of the institution, Mr. Ananda Mohan Bose. In 1905, the college was placed under the control of a society registered under Act XXX of 1868 and called the City College Institution, which is now known as the "Brahmo Samaj Education Society." Coming to the "Commerce Department" it is stated that the Commerce Department was started on a modest scale in 1939 at 13, Mirzapur Street, to impart instruction in, the evening particularly to those who are employed during the daytime. Thereafter, the department has expanded almost beyond recognition, Before I proceed further, I must deal with the memorandum of association of Brahmo Samaj Education Society, formerly known as the City College Institution. This memorandum shows that the object of the society was primarily to promote the cause of education in its highest and widest sense. The second object was to acquire buildings, and other properties, movable and immovable "of the present college and school known, and now being carried on in the town of Calcutta and at Mymensing as City College and School, and to take over the liabilities thereof and to carry on the same." The third object is "to establish schools and colleges in Calcutta and elsewhere." The nineteenth object as mentioned in the memorandum runs as follows:

To publish and undertake the publication of text-books and other useful books or papers for the furtherance of the objects of the society.

The last object is to do all such other things as may be incidental or conducive to the attainment of the objects mentioned in the memorandum including object No. 19 mentioned above. I direct that the copy of the memorandum handed over to me be marked as an exhibit and placed on the records. It appears from the

facts stated before me that at least the City College (Commerce) has got a well-organized publication section, where a number of books have been published. The publication section published various books and magazines not necessarily confined to the matters taught in the commerce department. The books are printed and published by the publication section. For example, there is a book called " Introduction to Companies Act, 1958" which is stated to be a monograph on the complicated Companies Act, 1956. There is another publication called "West Bengal Land and People." The publication and sale of these books has become a part of the activities of the college and these publications are sold by the college as also through its selling agents in the open market. I have been handed a publication which was issued by the publication section of the City College Commerce Department, described as "Foundation Day Souvenir, 1954." It appears from that publication, which I direct also to be made an exhibit and placed on the record, that the City College Commerce Department has now attained a vast proportion. This also appears from the affidavit filed by Gour Mohan Gborai affirmed on 13 April 1959. Talking about the colleges, as a whole, it appears that the number of students, including the women's department which was opened in 1943, would be about 16,000, and the annual income from the tuition fees is about Be. 20 lakhs. The colleges own extensive properties including premises No. 102/1, Amherst Stree, 13 Mirzapur Street, and 27/3 and 28, Kankulia Road, Calcutta. The colleges own building, lands, laboratories, workshops, commercial museum, hostels and a rest-house at Ghatshila. It appears that apart from these things there are many extra-curricular activities. There is even a co-operative society. It appears from this publication that during fifteen years of its existence, the commerce department has catered for over half a lakh of students from all parts of India. The commerce department alone maintains three separate centres and five distinct units, with centralized control and administration. It is stated that the City College is affiliated to the Calcutta University, but that the department of commerce and business organizations have been separately recognized by the Ministry of Education, Government of India, for the purpose of presenting candidates for the national diploma and certificate examination in commerce. This section of the college is also recognized by the Government of West Bengal for preparing candidates for the G.C.I. Board Examination in shorthand and typewriting. Talking about the administrative setup of the commerce department, we find the following:-

The supreme control of the institution Is vested in the governing body, known as the City College Council, composed as provided in the memorandum of association of the Brahmo Samaj Education Society, of 10 representatives of the Sadharan Brahmo Samaj, 3 representatives of the staff of the different departments, 2 ex officio members, 2 co-opted members and the joint secretary elected by the council so formed.

The council exercises its control over this institution partly direct and partly through the college committee, comparatively a small and businesslike body, to which it delegates some of its powers and functions, the principal and the vice-

principal being the ex officio chairman and secretary respectively to the committee.

2. As set out in the said publication, the executive head of the institution is the vice-principal. I find, however, that in annexure A to the affidavit of Gour Mohan Georai, an order has been set out dated 28 May 1955, made by A.K. Sen signing as "Principal, City College Commerce Department" to the effect that the designation of the vice-principal-in-charge of the commerce department will be changed to Principal, Commerce Department of City College. It is, however, stated that the Principal of the department will remain as before under the general supervision and direction of the Principal of the college. In another communication by the Principal of the Commerce Department set out in annexure A to the said affidavit, it has been stated that the Principal of the City College, 102, Amherst Street, Calcutta, was the person recognized by the university for the college, of which the commerce department was merely a part. It is stated that the principal of the college is also the secretary of the governing body. I might mention here that there is a union of employees in this college. I find in the annual magazine of the college called "Sanchayan" that there is a "City College Employees" Union and there is an article in the said magazine stating that the union had several conferences at which members of the ministerial and lower subordinate staff passed several resolutions, particularly that the college authorities and the Government of West Bengal should consider their helpless state and try to improve their conditions of service by introducing suitable scales of pay and adequate clearness and other allowances, with due regard to their livelihood. It also appears that the first respondent, namely, West Bengal College Employees' Association, furnished a charter of demands through the Labour Commissioner, Government of West Bengal, for framing scales of pay for the non-teaching staff and other demands. There appears also to have been conciliation proceedings.

3. In the background of these facts, it appears that the central administrative body is the Brahmo Samaj Education Society, a society registered under the Society Registration Act. Then there is the City College (General; and the City College (Commerce). As I have stated above, the dispute that has been referred for adjudication is between these two respective colleges and their non-teaching staff. The first point that has been taken before me is that these two colleges have no separate existence but that the employees are the employees of the Brahmo Samaj Education Society. It is argued that the order of reference is consequently bad. The second point that has been taken is that an educational institution cannot be called an "industry." There is no production of wealth with the co-operation of labour and capital as is necessary to constitute an "industry." Taking the last point first, the various tests that have been laid down for determination as to whether a particular institution is an "industry" have been discussed by me at length in my judgment in *Brij Mohan Bagaria Vs. N.C. Chatterjee and Others*, . That was the case of a solicitor practising in this Court. It was held that normally speaking the profession of a solicitor depended on his

personal efficiency, and in spite of the fact that he may employ in his office a number of ministerial and non-ministerial staff, there is no question of wealth being produced by the co-operation of capital and labour, and it did not constitute an "industry." I have however pointed out that although essentially the profession of a solicitor does not constitute an "industry," it may become an "industry" under certain circumstances. For example, I have pointed out that a solicitor might carry on a business of investment of money, in which case, it might be an "industry." It has been established by now that a profit motive is not essential to constitute an "industry." Even a municipal corporation may be an "industry" while distributing services. Under specified circumstances a hospital may be an "industry." Coming to an educational institution, a decision of the High Court of Australia has been cited? *Federated State School Teachers' Association of Australia v. State of Victoria* and Ors. 41 C.L.R. 569. It was held there by the majority judgment that the educational activities of the State carried on under the appropriate statutes and statutory regulations of each State, relating to education, did not constitute an "industry" within the meaning of Section 4 of the Commonwealth Conciliation and Arbitration Act, 1904-28, and that the occupation of the teachers so employed was not an industrial occupation and that the disputes which existed between the State and teachers employed by them was not an "industrial" dispute within the meaning of Section 51 of the Constitution of Australia. Knox, C.J., stated as follows:?

Testing this case, therefore, by the other suggested criteria or badges of Industrialism, can it be said that the educational activities of the States constitute an industry? So far as the matter is one of fact, we would say that they cannot. They bear no resemblance whatever to an ordinary trade, business or industry. They are not connected directly with or attendant upon, the production or distribution of wealth; and there is no co-operation of capital and labour, in any relevant sense, for a great public scheme of education is forced upon the communities of the States by law. It was said that if the activities were carried on by a private person, such as a schoolmaster, then the operations would be described as a business, a trade or an industry. Shortly, that argument is met by the fact that a private person could no more carry on this system of public education than he could carry on his His Majesty's Treasury or any of the other executive departments of Government; and if he were authorized to do so, which is almost inconceivable, then he could no more carry on an industry than the State does now.

4. The learned Chief Justice then proceeds to consider whether the occupation of teachers can be described as an industrial one, and held that it could not. Mr. Mukharji appearing on behalf of the respondent has pointed out that the fundamental basis of this decision was that, the States concerned made education compulsory and therefore, it could not be described as a business, trade or Industry. He drew my attention to the dissenting judgment of Isaacs, J. According to Isaacs, J, an "industry" is not confined to the production of wealth but also of services. Mr. Mukharji has also drawn my attention to a case decided

by the Labour Appellate Tribunal, *V.S. Marwari Hospital v. its workmen* 1952 II L.L.J. 327. In that case a very wide interpretation was made of the definition of an "industry" as defined in 01. (j) of Section 2 of the Industrial Disputes Act. The tribunal appeared to be of the opinion that it includes a charitable hospital, a university, a free school or a college and a municipal corporation. This interpretation is, in my opinion, too wide. As I have shown in *Brij Mohan Bagaria Vs. N.C. Chatterjee and Others*, , our conception of what constitutes an "industry" and what is an industrial dispute has not remained static, but has become greatly enlarged with the passage of time. This does not mean however that we can include within the word "industry" every kind of educational institution. As I have pointed out In that case, an undertaking which depends on the intelligence or capacity of an individual does not become an "industry," simply because it has a large establishment. There may be an educational institution to which pupils go because of the excellence of the teachers. Here again, the institution depends upon the intellectual capacity of the individual. It is therefore not an "industry." Let us take the extreme case of a teacher in an "ashram" in ancient India. Pupils flocked to such an "ashram" because of the personal reputation of the guru. Teachers of wide reputation might have thousands of pupils. Under no stretch of circumstances could such an institution be called an "industry." On the other hand, there may be an institution which is so organized that it is not dependent upon the intellectual skill of any individual, but is an organization where a number of individuals join together to render services which might even have a profit motive. Many technical institutions are run on these lines. When again we find that these institutions also do business by manufacturing things or selling things and thereby making a profit, they certainly come under the heading of an "industry." These being the tests, it is clear that it will be a question of evidence as to whether a particular institution can be said to be an industry or not. Its exact nature cannot be determined without knowing all the facts. In other words, in order to determine whether a given educational institution is an "industry" or not, it will be necessary to take evidence. In my opinion, the problem that has arisen in this case cannot be determined without taking evidence and the evidence that I have before me on affidavits is not sufficient and is rather conflicting. The first conflict arises on the question as to whether the City College (General) and the City College (Commerce) are separate or separable units. Mr. Meyer appearing on behalf of the petitioner has taken the point that the order of reference is bad because it purports to be an order of reference between the two colleges abovenamed and their non-teaching staff, whereas the non-teaching staff are not the employees of either of these colleges, since these colleges are not independent units at all, but are institutions run by the Brahmo Samaj Education Society, a society registered under the Societies Registration Act. In other words, it is argued that the employer is the said registered society and not the colleges. In any event, it is argued that the City College (Commerce) is only a department of the City College (General.) and in no sense to be treated as an independent unit, and be called the "employer" of its non-teaching staff. Before I deal with this point, it is necessary to point out

that the reference of an industrial dispute is not to be construed with the same strictness as a title suit. It has been held in *S.K.G. Sugar Ltd. Vs. Sri Ali Hassan, Chairman, Industrial Tribunal, Bihar and Others*, that where a reference u/s 10(1) is made of a dispute between a sugar factory owned by a company and its workmen, then what is intended to be made a party to the reference is the management of the sugar factory which belonged to the company. In that case, the company itself had gone into liquidation but the liquidator had, with the permission of the Court, leased out the factory. It was held that for the purposes of the reference it is the lessee who was in the management of the factory that should be considered as an employer, and not the company. In a Madras case, *Manager, United Commercial Bank, Ltd. v. Commissioner of Labour, Madras* 195 I L.L.J. 1, the party in an industrial adjudication was, as is obvious from the name of the case, not the bank but the manager. The same principle has been laid down in another decision of the Supreme Court, *Kays Construction Company (Private), Ltd. v. its workmen* 1958 II L.L.J. 660, Therefore, even if these colleges are institutions brought into existence by the registered society, or run by it, still if they constitute independent or separable units having distinct management, a reference of an industrial dispute between them and their workmen is a possibility. Whether these institutions are independent units or not, is a disputed question of fact, on the affidavits. In the affidavit filed by Gour Mohan Ghorai affirmed on 13 April 1959, various letters have been set out whereby the Principal of the Commerce Department was appointing the employees and generally acting as If the City College (Commerce; was a separate unit. In any event, this is a matter which is impossible to decide on affidavits. In this application there are really two issues raised. The first and the most important issue is as to whether the institution concerned can be called an "industry." And the second issue is as to whether the order of reference is Invalid because it has been made between the wrong parties. This calls for a determination of the fact as to whether the City College (General) and the City College (Commerce) have independent or separate managements. Both these Issues are dependent on facts, and in my opinion cannot be satisfactorily decided without taking evidence, and that the evidence of affidavits is not adequate. Apart from this, there is another aspect of the matter which makes the taking of evidence essential. I have already mentioned that the City College (Commerce, has admittedly a publication department, wherein a number of books and periodicals are printed, published and sold. That this aspect of the activities of the college is an "industry" there can be no doubt. But the question is as to whether this part of its activities is big enough, or whether it can be said to be a substantial part of the activities of the college, so that the college itself may be deemed to be an "industry." That can only be decided upon evidence. Even if it is held that the City College in one of its departments constitutes an "industry," then it will have to be determined as to what relationship there Is between the non-teaching staff who are parties to the order of reference and this "industry." That again would be dependent on evidence. Lastly there is an attempt to argue that even if the City College (Commerce) is deemed to be an "industry" by

reason of its aforesaid activities, it cannot be said that the City College (General) has any such activities, and consequently, it cannot be deemed to be an "industry." That again will depend on the question as to whether the City College (General) is an independent unit. If the City College (Commerce) is only a branch of the City College (General), a stand which had been taken by the petitioners themselves at one stage, then it may be said under certain circumstances that both the Institutions should be called, or have become, "Industries." The registered society itself, which under its memorandum of association is capable of many-sided activities, may under similar circumstances itself be called an "industry," if it has power to carry on such a business as the publication and sale of books and is in fact doing it through one of its institutions. That again appears to me to be a matter of evidence.

5. That being so, in my opinion, that application which has been made at this early stage of the proceedings is misconceived. An order of reference has been made and notice has been served on the petitioners to file objection. No evidence has yet been taken. The petitioners have already put forward objections of the same nature as have been made in this application, and doubtlessly these objections will be considered by the tribunal which has the power of taking evidence. Before the tribunal, all parties will be entitled to call evidence and the matter can be more satisfactorily decided. There is no reason therefore why the reference should be stopped at this stage, particularly when the points raised cannot be satisfactorily decided in this jurisdiction where evidence cannot be called. In my opinion, therefore, this application is premature and should be dismissed. The rule is discharged. Interim orders, if any, are vacated. The tribunal will now proceed with the reference and inter alia decide the point of jurisdiction upon evidence. This would be without prejudice to any rights the parties may have in future to challenge the findings of the industrial tribunal. There will be no order as to costs.