
(1963) 07 CAL CK 0024
In the Calcutta High Court

Case No : Matter No's. 377 and 381 of 1961 and 19, 22 and 70 of 1962

Brahmo Samaj Educational Society and Others

APPELLANT

Vs

West Bengal College Employee Association and Others

RESPONDENT

Date of Decision : 05-07-1963

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 15, 2

Citation : AIR 1964 Cal 48 : 67 CWN 878 : (1963) 7 FLR 357

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—Do educational institutions, like colleges affiliated to the Calcutta University, carry on any industry and are the members of the non-teaching staff employed by such colleges "work men", within the meaning of the Industrial Disputes Act? These are the questions which call for decision in these Rules.

2. The petitioners in the five Rules, which are being heard together by consent of parties, are the following colleges or their authorities, namely, (1) City College in Matter No. 377 of 1961; (2) Bangabasi College in Matter No. 381 of 1961; (3) Ashutosh College in Matter No. 19 of 1962; (4) Vidyasagar College in Matter No. 22 of 1962 and (5) Surendra Nath College in Matter No. 70 of 1962. The petitioners have moved against an interim award of the Fourth Industrial Tribunal, West Bengal, by which the Tribunal overruled preliminary objection as to the jurisdiction of the Tribunal to entertain the reference, that objection was that educational institutions do not carry on an industry and that disputes between such educational institutions and their workmen do not constitute industrial disputes within the meaning of the Industrial Disputes Act.

3. The circumstances under which the industrial disputes, referred to the Tribunal, arose in the different colleges are hereinafter stated in brief.

4. In Matter No. 377 of 1961, petition No. I is Brahmo Samaj Educational

Society, a Society registered under the Societies Registration Act; petitioner No. 2 is Amiya Kumar Sen, the Secretary of the Society and also the Principal of City College; petitioners Nos. 3 and 4 are respectively City College (General) and City College (Commerce).

5. It appears from the impugned interim award that City College owed its origin to the intensive effort for spread of English education in Bengal, towards the end of the nineteenth century, by several educationists and philanthropists. " City College was at first started as a High School, in the year 1879, by late Ananda Mohan Bose in collaboration with two other educationists, Pandit Shibnath Sastri and Sir Surendra Nath Banerjee. The High School was developed into a College and F. A classes were opened in the year 1881 and B.A classes in the year 1884. Thus within a comparatively short period the institution developed into a full-fledged degree college. The Late Ananda Mohan Bose, as founder of the institution, made over the college building to a body of trustees in the year 1899 and subsequently, in the year 1905, the college was placed under the control of a society, originally known as the City College Institution and later on known as the Brahmo Samaj Educational Society, The Commerce Department of the City College was started on a modest scale in the year 1939 and later on considerably expanded. There are shorthand and typewriting classes also run by the Commerce Department. A women's department of the college was opened in the year 1943. At present City College has three Zonal units -- one at No. 13, Mirzapur Street, one at No. 102/1, Amherst Street and one at No. 28, Kankulia Road, all in the city of Calcutta. Each of these Zonal units is in charge of a Vice-Principal, with a Principal at the head of all the three Zonal Branches.

6. The Memorandum of Association of Brahmo Samaj Educational Society, which was produced at the hearing, shows that the object of the Society is primarily to promote the cause of education. Amongst its other objects, object No. 19 is to the following effect:

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

7. It appears that City College (Commerce) has a publication section and the list of its publications (marked Exhibit "H" before the Tribunal) shows that the institution has published about 10 priced books and about 8 non-priced books.

8. In Matter No. 381 of 1961 the petitioners are the authorities of Bangabasi College. Bangabasi College had its origin in a School started in the year 1887. Later on the School was raised to an F.A. started college and was ultimately raised to a full-fledged degree college in the year 1896. The Commerce Department of the College was opened in the year 1942. Evening classes for B.Sc. and B.A. students were started respectively in the year 1945 and 1947. The college has a gymnasium and also a common room equipped with indoor games. The college publishes a magazine for students. The students organised into an Association run a canteen. There is a workshop attached to the college,

which repairs laboratory equipments and also manufactures small instruments exclusively for use in the college laboratories.

9. The management of the college is entrusted to a Governing Body in which there are some members who are nominees of the Board of Trustees for the college.

10. In Matter No. 19 of 1962 the petitioner is Ashutosh College a Society registered under the Societies Registration Act. The college, originally known as South Suburban College came into existence in 1916, at the initiative taken by the General Committee of South Suburban School, which was itself a Society, for imparting education to young-men in South Calcutta. After the death of Sir Ashutosh Mookerjee, who was for a time the President of the Governing Body of the College, the institution was named after him. The Memorandum of Association of the Society, which was produced at the bearing, shows that the object of the Society is to promote the growth and spread of higher education, to impart instruction in subjects prescribed by the Calcutta University for different examinations and also to provide for physical, intellectual and moral training of students. The building, in which the College is located, is the property of the Ashutosh Memorial Institute and some of the members of the Governing Body of the Ashutosh College are nominees of Ashutosh Memorial Institute. Under the organisation of the Ashutosh College Society three different Colleges are run, namely, (1) Ashutosh College; (2) Ashutosh College for women, also known as Jogamaya College and (3) Ashutosh College of Commerce. The Colleges have literary societies, debating clubs and a social service unit.

11. In Matter No. 22 of 1962 the members of the Governing Body of Vidyasagar College are the petitioners. The college was originally founded in 1859, under the name Calcutta Training School. In 1864 the management of the school entirely devolved upon Pandit Iswarchandra Vidyasagar and the name of the School was changed into Metropolitan Institution. In 1872 the School was raised to the status of College, and at present stands affiliated to the Calcutta University for imparting instructions upto B.A., B.S.'c., and B. Com. standards. In 1884 the properties of the College were vested in a body of trustees known as Vidyasagar Institute. The main object of the institution is to impart education to Indian students and to defuse useful knowledge in Bengali and other vernacular languages. The College itself is controlled by a Governing Body in which the trustees are entitled to nominate three members.

12. In Matter No. 70 of 1962 the petitioner No. 1, Dr. Jnanendra Nath Mukherjee is the President of the Board of Trustees of Surendra Nath College; petitioners NOS. 2 to 8 are all members of the said Board and petitioner No. 9 is the Secretary thereof.

13. Late Surendra Nath Banerjee, a well known patriot, took over a school known as Presidency School in the year 1882 and later on raised it to the status of full-fledged degree college under the name Ripon College. A Law Department (later

on known as Ripon Law College) was added to the said institution in the year 1885 and a Department of Commerce (since expanded into a separate college of Commerce) was added in the year 1940. There was a Womens" Department opened in the year 1948.

14. In the year 1909 the late Surendra Nath Banerjee handed over the said Ripon College, under a deed of trust, to a Board of Trustees, of which the petitioners are the present members. Under the aforesaid Deed of Trust the activities of the institution are limited to imparting education or academic training to students through its different departments. At present there are three distinct departments or colleges in the said institution, namely:

- (1) Surendra Nath College of Arts and Science,
- (2) Surendra Nath College of Commerce and
- (3) Ripon Law College.

15. The three separate colleges are managed by their respective governing bodies known as College Councils. But the overall control is vested in the Board of Trustees, who are the present petitioners. The colleges have first aid training centres, physical culture units and college unions having control over the common room and cultural activities of the students. The college has also a hostel for accommodation of students.

16. The West Bengal College Employees Association either as itself or as representing the workmen of the different colleges, which are parties to these Rules, is a respondent in all the Rules. On behalf of the Association it was contended that the expression "workmen" was wide enough to include the teaching and non-teaching staff of colleges and the Association must be treated as representing both the categories of staff. This claim was strongly disputed by the petitioners, according to whom the Association, if representative of any body, is the representative of the non-teaching staff employed in the different colleges. The evidence in this regard does not conclusively establish the claim of the Association to represent teaching staff of the colleges. I am, however, saved from examining this point in further detail because of the assistance rendered by Mr. Masud, learned Advocate appearing for the State Government and the Industrial Tribunal. He produced from the records, a printed copy of a Memorandum issued by the Association (which I have marked as Exhibit "3"). The said Memordandum contains an admission that the Association is composed of all non-teaching employees of all non-Government Colleges in West Bengal. After this admission, contained in a Memorandum issued by the Association itself, it is idle to contend that the Association represents the teaching staff of the colleges as well.

17. The abovenamed Association started agitation for the betterment of the service condition of the non-teaching staff of the colleges through self-help pressure tactics and ultimately succeeded in involving the colleges in a

conciliation proceeding, u/s 12 of the Industrial Disputes Act. The report of the Conciliation Officer, which also I marked as Exhibit "3", goes to show that the conciliation officer recommended to the State Government industrial adjudication by a Tribunal on the following claims of the workmen:

- (1) Pay and fixation of grades and scale for different categories of employees;
- (2) Dearness allowance;
- (3) Holidays;
- (4) House allowance;
- (5) Duty hours;
- (6) Provident Fund.

18. This is how the reference came to be made by the State Government before the Fourth Industrial Tribunal.

19. The petitioners colleges could not reconcile themselves to being called industries and did not like that their non-teaching staff would unite in trade unions to agitate their alleged grievances. They took a preliminary objection to the jurisdiction of the Tribunal on the plea that colleges and educational institutions did not carry any industry, that members of their non-teaching staffs were not workmen, within the meaning of the Industrial Disputes Act, that their grievances, if any, would not constitute any industrial dispute and that the members of the non-teaching staffs should not be allowed to unite in trade unions and agitate their grievances like industrial workmen.

20. The Industrial Tribunal was not willing to uphold the preliminary objection at that stage. Thereupon Brahma Samaj Institution and certain units of the City College moved this Court, under Article 226 of the Constitution, and obtained a Rule, which was numbered as Matter No. 181 of 1958. In discharging the Rule Sinha, J. expressed the opinion that an undertaking which depended upon the intelligence and capacity of individuals would not become an industry simply because it had a large establishment. His Lordship further expressed the opinion that an institution which was so organised that it was not dependent upon the intellectual skill of any individual but was an organisation where a number of individuals joined together to render services, which might even have a profit motive and might also do business by manufacturing things or selling things and thereby making a profit, would come under the heading industry. What sort of an institution the petitioners were. His Lordship observed need be decided on evidence and in that view refused to entertain the objection at that stage. His Lordship's judgment is reported in 64 CWN 191, Brahma Samaj Educational Society v. West Bengal College Employees' Association.

21. Thereafter, the Industrial Tribunal took evidence on the preliminary objection as to its jurisdiction to entertain the reference and by an interim, award, dated August 24, 1961, overruled the objections.

22. Aggrieved by the interim award the petitioner Colleges or their authorities moved this Court, under Article 226 of the Constitution, praying for a Writ of Certiorari for the quashing of the interim award and for Writ of Prohibition on the Industrial Tribunal restraining it from further proceeding in the adjudication. They obtained these five Rules.

23. Mr. S. Roy, learned Advocate for the Brahmo Samaj Educational Society and other petitioners in Matter No. 377 of 1961, argued the common point of law involved in all the Rules by consent of other learned Advocates appearing for the different petitioners in the other Rules. The main burden of the argument of Mr. Roy was that however wide may be the meaning of the word "industry" the expression did not include the work done by colleges, namely, the imparting of education and making students intellectually equipped. He strongly contended that the Tribunal was in error in giving to the definition of the word "industry" an unreasonably wide denotation by adopting a mechanical and literal rule of construction and urged that the policy of the Industrial Disputes Act clearly was to have education and educational institutions outside the purview of the Act.

24. Mr. P.K. Sanyal, learned Advocate for the Association in all the Rules, sought to repel the contention of Mr. Roy with the argument that Section 2(j) of the Industrial Disputes Act defined the word "industry" as a word of wide import and it would be necessary to read the word in its widest denotation. Mr. Sanyal argued that any attempt at putting any artificial restraint on the word "industry" would be unjustifiable and would defeat the purpose of the definition. In support of his argument Mr. Sanyal strongly relied on the decision of the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, . He also contended that even if imparting of education simpliciter be not industry, most of the colleges were engaged in extra-curricular activities and City College in particular was engaged in a publication business and that such activities on the part of the Colleges must not be allowed to remain outside the definition of "industry".

25. It is not disputed that some of the colleges run canteens selling refreshments to students, maintain workshops for repairs of laboratory equipments, have hostels providing for boarding and lodging to students and also provide amenities to students for sports, amusements and cultural activities. These activities, Mr. Sanyal contended, were not educational activities and the colleges which indulge in such activities must not be allowed to remain outside the scope of the expression "industry".

26. In my opinion the argument advanced by Mr. Sanyal is attractive but not of substance. There exists a good deal of incomprehension as to what education consists of. The aim of education is not merely to load the memory of students with the thoughts of other men. The great aim of education is to discipline rather than to furnish the mind; to train the mind to the use of its own powers rather than to fill it with the accumulations by others. This can be fully accomplished by assisting the developments both of the body and the mind and by enriching the

mind with intellectual, moral and emotional culture.

27. In the case of University of Delhi and Another Vs. Ram Nath, the Supreme Court also expressed the same View. Observed Gajendragadkar, J.

"Education Seeks to build up the personality of the people 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(f) as to exclude teachers from its scope."

28. The work of imparting education is carried on with the assistance and co-operation of teachers. In the process of developing the personality of the students a fixed curriculum of study is necessary but that does not serve the entire purpose. Over and above class-room teachings on fixed curriculum, it is necessary that a student should be afforded facilities to improve his physique in gymnasiums, to develop his team spirit in fields of sport, to cultivate himself in debating societies and symposiums and to fulfil himself by acquisition of knowledge in fine arts and aesthetics. An educational institution is not a proper educational institution unless it provides also for all or most of these other branches of education over and above what it teaches in class rooms.

29. The maintenance of canteens and hostels are also part of educational process. A student who does not find food and board in healthy surroundings is not expected to grow in sound body. An unhealthy constitution retards education and exposes the students to risks of malnutrition's and diseases. Therefore, canteens and hostels are necessary parts of educational institutions. An educational institution which runs hostels and canteens exclusively for use of students must not be treated as carrying on a business apart from education.

30. A repair shop for laboratory equipments is necessary for keeping the laboratory in order and is a necessary adjunct to the laboratory itself. A publication section, however, stands on the border line. It may be part of the educational system, if a college publishes books such as the students may need; it may not be such a part if the college publishes other books as well, although it may be difficult to determine what books the students should read and what they should not. But if the publication section of a college is only a minor activity of an educational institution, the carriage of that activity should not be taken to lend an industrial colour to the educational institution. In the case of the City College, it appears that the publication section has published only about ten priced books and eight non-priced books. On that evidence I am not prepared to hold that publication of books is the major activity of the college.

31. Then there is another aspect to be considered. The West Bengal College Employees Association does not represent the teaching staffs of the college. The Supreme Court has held in the case of University of Delhi and Another Vs. Ram Nath, that teachers and lecturers do not fall within the category of industrial workmen. Faced with this difficulty, Mr. Sanyal argued that the non-teaching staff,

comprising clerical and menial employees, largely helped the running of the educational institutions and that there was no reason why they should be excluded from the category of industrial workmen. This argument is wholly devoid of substance. The administration of college is entrusted in their executive bodies. The imparting of education is in the hands of the teachers and lecturers. The services rendered by accountants, library clerks, bearers, gateman and others are in the nature of personal services rendered to those who are concerned with education in educational institution. Their association with educational institution must not be taken to degenerate educational institutions into industrial institutions and to convert clerical and menial staff into industrial workmen. In the case of University of Delhi and Another Vs. Ram Nath, the Supreme Court pointed out as hereinbelow quoted :

"It is true that like all educational institutions the University of Delhi employs subordinate staff and the subordinate staff does the work assigned to it; but in the main scheme of imparting education, this subordinate staff plays such a minor, subsidiary and insignificant part that it would be unreasonable to allow this work to lend its industrial colour to the principal activities of the University which is imparting education."

32. The Supreme Court also pointed out that what was said about the University of Delhi would be equally true about all educational institutions which were founded principally for imparting education.

33. That being the position in law, the Tribunal was clearly in error in equating the works carried on by colleges with industrial works, and in treating their workmen as industrial workmen. Since colleges do not carry on industrial activities and are not industries, a dispute between colleges and their workmen does not constitute an industrial dispute and the Tribunal had no jurisdiction to entertain such a dispute.

34. In the view taken by me that the dispute is not an industrial dispute, I need not consider the other point raised before the Tribunal that the workmen of colleges cannot unite in a trade union. Further the point, although taken before the Tribunal, was not urged before this Court. For the reason aforesaid. I have to quash the interim award and prohibit the Tribunal from further proceeding with the adjudication.

35. Before I part with these Rules I need dispose of certain objections taken up by Mr. Sanyal as to misjoinder of parties and form of the cause title of the petitions. That objection is confined to Matter No. 377 of 1961 (the application by City College) and Matter No. 381 of 1961 (the application by Bangabasi College). So far as Matter No. 377 of 1961 is concerned. Mr. Sanyal contended that the dispute was between the authorities of the college and workmen represented by the West Bengal College Employees' Association. Brahma Samaj Educational Society was no party to the reference and must not be allowed to apply against the interim award. This argument is much too technical to be entertained. From

the averments in the petition it appears further that the Brahmo Samaj Educational Society although not the direct authority, certainly is some authority in respect of City College group of colleges.

36. In Matter No. 381 of 1961 the petitioners are the authorities of the Bangabasi College, Mr. Sanyal characterised this as much too indefinite a form of description and contended that it is impossible to ascertain who the authorities were. Mr. Sanyal is right that an unnamed and un-described authority cannot be the petitioner. The petition is however, signed by the Principal of the College, on behalf of the authorities. It is not disputed that the Principal is a person in authority over the college. I read the petition as a whole and treat the petition as made by the Principal, who is an authority in respect of the Bangabasi College. For the reasons aforesaid I do not make much of this branch of Mr. Sanyal's objections.

37. These Rules are made absolute. The interim award is quashed. Let a Writ of Certiorari issue quashing the interim award. Let a Writ of Prohibition also issue prohibiting the Tribunal from further dealing with the Reference.

38. There will be no order as to costs.