(2009) 05 JH CK 0050

In the Jharkhand High Court

Casual Labourers workmen numbering 127 of the Central Horticultural Experiment Station — APPELLANT

Vs

Employers in relation to the Management of the Central Horticultural Experiment Station (a regional experiment station of the Indian Institute of Horticultural Research and Indian Council of Agricultural Research) — RESPONDENT

Date of Decision : 07-05-2009

Acts Referred:
Industrial Disputes Act, 1947 — Section 2(j), 2(s)

Citation : (2009) 05 JH CK 0050

Hon'ble Judges : Narendra Nath Tiwari, J;Ajit Kumar Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this appeal the appellant has challenged the order dated 5.4.04 passed by the learned Single Judge in C.W.J.C No. 2104/1995(R) whereby the said writ application has been allowed and the award dated 30.3.94 of the learned Tribunal, so far as it directs for regularization of the services of the casual workers, has been set aside.

2. The appellant in whose favour the Industrial Tribunal had rendered the award is aggrieved by the order of the learned Single Judge whereby he has quashed the said award holding that the respondent-Management of the Central Horticultural Experiment Station, Ranchi (hereinafter to be called as ''the CHES'') is not an industry and the impugned award of the learned Tribunal is vitiated on account of non-consideration of the relevant facts and valid reasons.

3. Before coming to the moot point as to whether the respondent is an industry and for putting the impugned order to the legal test, it is necessary to state the admitted facts giving rise to the dispute in question. The CHES is one of the Regional Research Stations of the Indian Institute of Horticultural Research (IIHR), Bangalore, which itself is one of about 50 Research Institutes of the

Indian Council of Agricultural Research (ICAR), New Delhi. It is mainly engaged in research, training, teaching and transfer of technology to the farmers through its various Research Institutes, National Research Centres, Project Directorates etc. The CHES has a research farm for that purpose where the fruits such as mango, litchi, guava, banana, pineapple, papaya, citrus, plum, pomagranate, jackfruit, bael, lemon, phyalsa etc and the vegetables such as cauliflower, cabbage, peas, beans, parwal, tomato, brinjal etc are grown and sold through the sales counter of the Research Station. The price is fixed by the Head/Director on the basis of the recommendation of the price fixation committee. For the purpose of growing the said fruits and vegetables, the workers are engaged for planting, spraying, weeding, irrigation, propagation, harvesting and sale etc. The respondent requires a large number of labourers for the said activities. The appellant-concerned workmen are among those workers who were engaged by the CHES on daily wages basis for the period from 21.3.1979 to 28.3.1984.

4. The concerned workmen claimed that although they had been working since long and they were categorized as Group-D employees, they have not been regularized nor the benefit of Group-D scale was given to them. They claimed that they were entitled to be regularized as Group-D employees. The appellant further claimed that the nature of the work for which they are engaged is perennial in nature and keeping the concerned workmen engaged for decades as casual workers, is unfair labour practice and violation of the provisions of the Industrial Disputes Act [hereinafter referred to as ''the I. D. Act''] .

5. The said claim/grievance gave rise to the dispute between the workmen and the Management which led to the reference by the appropriate Government i.e. the Central Government for adjudication before the Central Government Industrial Tribunal, Dhanbad in the following terms:

Whether the action of Central Horticultural Experiment Station, Ranchi in not regularizing the services of 127 casual labourers as per list annexed and also not paying proper wages to them is justified? If not, to what relief these workmen are entitled.

6. Before the learned Tribunal the concerned workmen reiterated their claims stating that they were engaged between 21.3.1979 to 28.3.1984 and they are entitled to be regularized as Group-D employees. The Government of India by circular dated 21.3.79 and by subsequent circulars issued from time to time made provision for recruitment of casual labourers for regular nature of work. But in spite of long lapse of time since their engagement, 127 concerned casual workmen have not been regularized as Group-D employees.

7. The Management, on the other hand, contested the said claims. In their written statement it has been stated, inter alia, that the CHES is mainly the Research Station of IIHR, Bangalore. It is engaged in research, teaching, training in agriculture, horticulture, animal husbandry, fishery, poultry etc. The Research Centre and its allied disciplines are intended to develop and identify the new

improved varieties, standardized various seeds and plants propagation methods, crop utilization for the benefit of the cultivators, growers, extension workers, teachers, fellow research workers etc. The main objects of the CHES are to develop better varieties of important fruits and vegetables crops, control of diseases of the crops by improving the various pesticides, chemicals, timings, method and period of plant/seed propagation so as to benefit the growers and cultivators. The CHES is an instrumentality of Government of India created under the Agricultural Produces Cess Act, 1940. The CHES has a research farm, not a commercial farm. Saleable produces are limited and the same are sold through the sales counters of the Research Station at the price fixed by the Head/Director on the basis of the recommendation of the price fixation committee. The object is not commercial or profit making. The CHES is, therefore, not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The concerned workmen are paid minimum wages fixed by the Government of Bihar or the Central Government whichever is higher. They are given the work similar to that of Group-D employees.

8. Learned Tribunal after considering the facts and the rival contentions as also the materials and documents on record, came to the finding that the CHES is an ''industry'' and the concerned workmen engaged to do the jobs are workmen within the meaning of Section 2(s) of the I. D. Act and they deserve regularization and payment of wages as admissible to Group-D employees at its lowest scale of pay. Learned Tribunal also observed that taking work as casual labour on shockingly poor wages for several years exceeding more than 10 years is exploitative terms and conditions and is an anti-labour practice by the Management of the CHES, Ranchi.

9. It appears from the records that the said observation pinched to the respondent more than the award of regularization of the concerned workmen. The Management challenged the same in the writ petition being C.W.J.C No. 2104/1995(R) and prayed for quashing the award dated 30.3.1994 expunging the observation made in the award thus "it will be mere repetition to state that taking work as casual labour on shockingly poor wages for several years extending more than 10 years is exploitative terms and conditions amounting to anti-labour practice by the Management of CHES, Ranchi".

10. When the said writ petition was taken up for hearing on 23.8.96 before the learned Single Judge, the Management-petitioner informed that the award has been complied with and the concerned workmen have been regularized, but they were aggrieved by the aforesaid remark in the award. On that day, however, nobody appeared on behalf of the concerned workmen. Learned Single Judge on the said submission that the terms of the award were complied with and the employees were regularized, disposed of the writ application and expunged the said remark made in the award.

11. The concerned workmen on coming to know about the said order filed a petition for review being Civil Review No. 84/1998 (R) stating that the award

dated 30.3.1994 has not been complied with.

12. Learned Single Judge after hearing the parties recalled the following part of the order: "It is also evident from the submission made by the learned counsel for the petitioner that he has complied with the direction of the award and regularized the employees". The learned single Judge also gave liberty to the workmen to take steps u/s 29 of the Act for prosecution of the employers.

13. The Management preferred LPA against the order passed in the civil review. When the said appeal was taken up for hearing, the appellate Court noticed that the writ petition was not disposed of on merit and the subsequent development was not taken into consideration by the learned Single Judge. The said L.P.A was disposed of by recalling the entire order dated 23.8.96 passed in C.W.J.C No. 2104/1995(R) and directing to place the said writ petition for fresh consideration before the appropriate Bench.

14. Thereafter, the said case was again listed before the learned Single Judge who had passed the impugned order dated 5.4.04. Allowing the said writ petition, learned Single Judge has set aside the award of the learned Tribunal holding that the CHES is not an ''industry'' within the meaning of Section 2(j) of the Industrial Disputes Act.

15. Assailing the said order in this appeal, the appellant-concerned workmen have mainly raised two grounds. (i) That the learned Single Judge has failed to take into consideration that the respondent engaged labourers for the horticultural and agricultural purposes and for producing fruits and vegetables which are sold in the market through the sales counter. By such saleable products the people are benefited and the human wants are satisfied. The activities of production, distribution and supply of material goods to satisfy the human wants and needs of the people comes within the meaning of an industry, as defined by the Supreme Court in seven Judges'' Constitution Bench in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . The learned Single Judge has failed to appreciate the presence of the said ingredients in the CHES and has erroneously relied on the decision of the Supreme Court in the case of Physical Research Laboratory Vs. K.G. Sharma, which has got no application to the facts of the instant case. (ii) The learned Single Judge has failed to take into consideration that even in the writ petition the Management was mainly aggrieved by the observation made by the learned Tribunal against the Management and had specifically prayed for expunging the said remark and quashing the part of the award only to that extent. Learned Single Judge has erroneously quashed the part of the award against which the Management was not aggrieved and had no objection in complying with the term of the said award. The Management had even subsequently informed this Court that they have complied with the direction of the award and their only grievance was against the remark made in the impugned award.

16. We have heard learned counsel for the parties and considered the facts and

materials on record and the rival contentions and submissions of the parties.

17. On perusal of the impugned order of the learned Single Judge, we find that he has relied on a decision of the Supreme Court in Physical Research Laboratory case (supra) and has held that the CHES lacks the elements which would make it an organization carrying on any business activity concerning trade or business to bring it within the purview of an industry defined u/s 2(j) of the Industrial Disputes Act and that the finding of the learned Tribunal that the CHES is an industry is wholly illegal and perverse.

18. Learned Tribunal, relying on a decision of the Supreme Court in Bangalore Water Supply case (supra), has held that the CHES is an ''industry''. In the said case the Hon''ble Apex Court amongst others has interpreted the term ''industry'' as defined u/s 2(j) of the I. D. Act. The Supreme Court has also discussed the applicability of Section 2(j) to the research institute. In paragraphs 134 and 135 of the said decision it has been discussed and held, thus:

134. We may proceed to consider the applicability of Section 2(j) to institutions whose objectives and activities cover the research field in a significant way. This has been the bone of contention in a few cases in the past and is one of the appeals argued at considerable length and with considerable force by Shri Tarkunde who has presented a panoramic view of the entire subject in his detailed submissions. An earlier decision of this Court. The The Ahmedabad Textile Industry''s Research Association Vs. The State of Bombay and Others, has taken the view that even research institutes are roped in by the definition but later judicial thinking at the High Court and Supreme Court levels has leaned more in favour of exemption where profit-motive has been absent. The Kurji Holy Family Hospital was held not to be an industry because it was a non-profit-making body and its work was in the nature of training, research and treatment, The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi, . The Dhanrajgirji Hospital Vs. The Workmen, , a bench of this Court held that the charitable trust which ran a hospital and served research purposes and training of nurses, was not an industry. The High Courts of Madras and Kerala have also held that research institutes such as the Pasteur Institute, the C.S.I.R and the Central Plantation Crops Research Institute are not industries. The basic decision which has gone against the Ahmedabad Textile case is the Safdarjung Case. We may briefly examine the revival viewpoints, although in substance we have already stated the correct principle. The view that commends itself to us is plainly in reversal of the ratio of Safdarjung which has been wrongly decided, if we may say so with great respect.

135. Does, research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, parascientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may

be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into money aplenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an organization propelled by systematic activity, modelled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries.

19. In conclusion, the ''industry'' defined u/s 2(j) of the I.D. Act, has been given wide meaning in paragraph 161 of the said decision as follows:

161. ''Industry'', as defined in Section 2(j) and explained in D.N. Banerji Vs. P.R. Mukherjee and Others, has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale Prasad or food) prima facie, there is an ''industry'' in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthrophy animating the undertaking.

II Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) ''Undertaking'' must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be ''industry'' provided the nature of the activity, viz. the employeremployee basis, bears resemblance to what we find in trade or business. This takes into the fold ''industry'' undertakings, callings and services, adventurers ''analogous to the carrying on of trade or business''. All features, other than the methodology of carrying on the activity viz. in organizing the cooperation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more. (a) The consequences are (i) professions, (ii) Clubs (iii) educational institutions (iv) co-operatives, (v) research institutes (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section 2(j).

(b) a restricted category of professions, clubs, cooperatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the nonemployee character of the unit.

(c) 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. Such eleemosynary or like undertakings alone are exempt - not other generosity, compassion, developmental passion or project.

IV The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not ''workmen'' as in the University of Delhi and Another Vs. Ram Nath, or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the The Corporation of the City of Nagpur Vs. Its Employees, will be the true test. The whole undertaking will be ''industry'' although those who are not ''workmen'' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, nor the welfare activities or economic adventurer undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the act categories which otherwise may be covered thereby.

The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi, The National Union of Commercial Employees and Another Vs. M.R. Meher, Industrial Tribunal, Bombay and Others, Secretary, Madras Gymkhana Club Employees'' Union Vs. Management of the Gymkhana Club, University of Delhi and Another Vs. Ram Nath, The Dhanrajgirji Hospital Vs. The Workmen, and other rulings whose ratio runs counter to the principles enunciated above, and The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, is hereby rehabilitated.

20. Considering the admitted activities of the respondent-CHES, we find systematic activity organized by co-operation between employer and employee for the production and/or distribution of goods and services intended to satisfy human wants and wishes. Its researches are valuable contribution to the society. Its products are also sold in the market and there is sufficient element of production, distribution and supply of material goods and services to satisfy the human wants and needs of the people. In view of the said established definition by the Apex Court holding the field so far, it has to be held that the respondent-CHES comes within the meaning of an ''Industry'' u/s 2(j) of the I. D. Act.

21. Learned Single Judge has erroneously relied on the decision of the Physical Research Laboratory case (supra) which was rendered on a different fact situation. In that case the said laboratory was an institution under the Government of India''s Department of Space. It is engaged in pure research in space science. The purpose of research is to acquire knowledge about the formation and evolution of the universe. But the knowledge thus acquired is not intended for sale. The research was not for the benefit or use of others. The knowledge was not marketable or of any commercial value. It was only for the benefit of the Department of Space. The activities were not for production, supply or distribution of material goods or services which were intended to satisfy the human wants and needs. In the case in hand the agriculture, horticulture, fishery and poultry are the activities for production and distribution of material goods for satisfying the human wants and needs. The facts of the instant case are entirely different from the facts of Physical Research Laboratory case (supra). The said decision has got no application in the instant case.

22. Learned Tribunal has rightly held that the instant case is squarely covered by the decision of the Supreme Court in Bangalore Water Supply case (supra) and has rightly rendered the award relying on the said decision. The learned Single Judge has, thus, erroneously set aside the said award allowing the respondent''s writ petition by the impugned order.

23. The second ground of the appellant is also worth acceptable. On going

through the writ petition and taking notice of the subsequent events, we find that the management-respondent was mainly aggrieved by the observation made against them by the learned Tribunal while rendering the award. In the writ petition they had prayed for quashing only the part of that order. From the order dated 23.8.96 passed in the writ petition, it appears that the Management has already accepted and complied with the terms of the award. The prayer made in the writ petition and compliance of the award clearly manifest that the Management did not intend to seek quashing of the regularization part of the order. The learned Single Judge seems to have lost sight of the same while passing the impugned order of setting aside the whole award of learned Tribunal. The impugned order of the learned Single Judge is unsustainable on that ground as well.

24. For the reasons aforementioned, we allow this appeal, set aside the order of the learned Single Judge and restore the award rendered by the learned Tribunal.

25. Since the respondent-Management have made clear statements that the award has been implemented, we take notice of the same and direct the respondent to issue clear order to the concerned workmen and to pay them the arrears of Group-D pay scale payable to them at the lowest pay scale of Group-D employees, if not already paid in view of the pendency of this appeal or for any other reason.

26. However, there is no order as to costs.