
(1996) 12 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 7338 of 1995

Cattle Development Officer, (I.C.D.P.)	APPELLANT
Vs	
Taranisen Dash and Others	RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1998) 3 LLJ 1178

Hon'ble Judges : S.N. Phukan, C.J.; A. Pasayat, J

Bench : Division Bench

Advocate : R.K. Mohanty, Addl. G.A, for the Appellant; E.Ch. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, C.J.—This writ petition has been filed by the Cattle Development Officer (I.C.D.P). Sambalpur, against the ex parte award dated November 13, 1993 made by the learned Presiding Officer, Labour Court, Sambalpur,

2. Briefly stated, the workman-opposite party No. 1, after undergoing training as Village Cattle Inseminator at the cost of the Government, was appointed in March, 1983 by the District Veterinary Officer, Sambalpur. According to the writ petitioner, after introduction of Liquid Nitrogen Semen, the services of opp. party No. 1 were terminated in May, 1988. There was a conciliation proceeding. Thereafter the State Government by order dated September 19, 1992 referred the following dispute for adjudication of the Labour Court, Sambalpur :

"Whether the termination of services of Taranisen Dash w.e.f. May 27, 1988 by the Cattle Development Officer (Intensive Cattle Development Project), Sambalpur, is legal and/ or justified? If not, what relief Sri Taranisen Dash is entitled to ?"

By the impugned award, the Labour Court has held that there was violation of Section 25F of the Industrial Disputes Act, 1947 (shortly called "the Act") and

accordingly directed reinstatement of opp. party No. 1 in service with full back wages after setting aside the termination order.

3. We have perused the exparte award and we find that on the basis of the statement of the workman, the award was made.

4. Before this Court, the main point urged is that the Intensive Cattle Development Project under Veterinary Department is not an industry and in this connection reference was made to a decision of this Court in *Habibulla v. State of Orissa* : OJC No. 3232 of 1990, disposed of on February 7, 1991. Wherein it was held that Veterinary Department of the Government is not an "industry". The word "industry" has been defined in Clause (j) of Section 2 of the Act. Though this clause has been amended by the Industrial Disputes (Amendment) Act, 1992 the amendments have not been brought into force. Therefore, for the present purpose, the definition of "industry", as existed prior to the amendment, will apply and it runs as follows :

"(j) "industry" means, any business, trade undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen;"

Whether the branch of the Veterinary Department namely, the Intensive Cattle Development Project, is an industry or not would require evidence as this point has not been gone into by the learned Presiding Officer of the Labour Court.

In this connection, we may refer to the landmark decision of the Apex Court in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, . The Apex Court, inter alia, laid down the criteria for determining an activity as "industry", after referring to the decision in *D.N. Banerji Vs. P.R. Mukherjee and Others*, , as follows :

"(a) Where (i) systematic activity, (ii) organised 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 philanthropy animating the undertaking."

There are subsequent decisions of the Apex Court on this point which the Labour Court shall also take into consideration while deciding this matter.

5. From the award in question, we find that the Labour Court did not at all consider, as stated above, the question as to whether the Intensive Cattle Development Project under the Veterinary Department is an "industry" or not. Evidence has to be led by the parties on this point and this point cannot be decided in writ petition on the basis of affidavits only. Therefore, it is a fit case for remand.

6. In the result, the writ petition is allowed and the impugned award is quashed. We remand the industrial dispute to the Labour Court to decide first the point as to whether the Intensive Cattle Development Project under the Animal Husbandry Department of the Government of Orissa is an "industry" or not ; and if it is held to be so, the Labour Court shall enter into the merits of the case. Both the parties are directed to appear before the Labour Court on January 2, 1997 for obtaining necessary orders. Office to send back the records forthwith by a special messenger, if necessary, so that the record reaches the Labour Court before January 2, 1997. As the impugned award is set aside, Misc. Case No. 11 of 1994 pending before the learned Sub-divisional Judicial Magistrate, Bargarh, has become infructuous.

The parties to bear their own costs.

A. Pasayat, J.

7. I agree