

(1991) 02 CAL CK 0064
In the Calcutta High Court
Case No : Matter No. 3718 of 1989

Hanshree Apartment Owners" Association	APPELLANT
Vs	
Hanshree Apartment Owners" Employees" Union and Others	RESPONDENT

Date of Decision : 15-02-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : 95 CWN 1004 : (1992) 2 LLJ 423

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Advocate : Partha Sarathi Sengupta and Arunava Ghosh, for the Appellant; Kalyan Bandopadhyay and S.R. Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Kalyanmoy Ganguli, J.—The petitioner in the instant application under Article 226 of the Constitution of India challenges an order of reference being Annexure "P" to the petition referring an industrial dispute to the Presiding Officer, 3rd Industrial Tribunal, West Bengal being respondent No. 11.

The case was hotly contested.

2. The petitioner is an association of apartment owners under the specific name and style of "Hanshree Apartment Owners" Association" having its registered office at 6, Hastings Park Road, Alipore, formed in accordance with the provision of the West Bengal Apartment Ownership Act, 1972, hereinafter referred to as the 1972 Act. The respondent No. 1 is the association of the employees rendering services to the petitioner and not to any individual member of the petitioner. The respondents Nos. 2 to 7 are also the employees of the petitioner whose services have been terminated by the petitioner giving rise to the present case.

3. It is not necessary to deal with either the past history of these apartments or with the previous litigations fought by the parties for the establishment of their

respective rights.

4. It is sufficient to note that Ashok Marketing Ltd., a Public Limited Company owned the apartments in question and got the said apartments declared u/s 2 of the 1972 Act read with Sub-section (1) of Section 10 of the said Act. This incidentally means that the apartments were made for residential purposes.

5. It is an admitted position that the members of the respondent no. 1 and the respondent Nos. 2 to 7 are currently employed by the petitioner and are being paid by the petitioner for rendering services to the petitioner. The question as to whether the said respondents were appointed afresh by the petitioner or whether the petitioner inherited this burdensome obligation from Ashok Marketing Ltd. is totally irrelevant for a decision on the point in issue.

6. The admitted position is that there was some allegation of an incident of assault made on two members of the Board of Managers of the Petitioner No. 1 by the respondent Nos. 2 to 7 which resulted in initiation of criminal proceedings and culminated in dismissal of the said respondent Nos. 2 to 7.

7. The respondent No. 1 initiated conciliation proceedings before the appropriate authority which, as usual, failed and a failure report was submitted to the appropriate Government u/s 12(4) of the Industrial Disputes Act, 1947, hereinafter referred to as the 1947 Act. The appropriate authority in its turn referred the said dispute to the respondent No. 11 by the order impugned in this application being Annexure "P" thereof.

8. The main contention of the writ petitioner is that the members of the respondent No. 1 along with the respondent Nos. 2 to 7 fall in the domain of "domestic servant" and such "domestic servant and the like" should be excluded from the definition of industry and workmen within the meaning of Section 2(j) and 2(s) of the 1947 Act respectively.

9. Mr. Sengupta, in trying to elaborate this proposition, submitted that if the entire building is owned and occupied by a very rich single owner who chooses to appoint a host of servants and aids for purposes of maintaining and effecting different repair works, then certainly such employment will not come under the purview of an industry. On the same analogy, he urges that if simply the ownership is divided into smaller fractions, the nature of the work rendered by such multiple servants do not undergo any change. Mr. Sengupta contends that it is only the nature of the service and not the person or persons to whom such services are rendered should be the criteria to judge as to whether a particular activity comes within the mischief of the definition of industry within the meaning of Section 2(j). Plurality of ownership cannot change the nature and character of the services rendered and should not be allowed to convert an activity, which when rendered to a single individual was not an industry, into an industry when rendered to a multitude of individuals.

10. Over-simplification of an issue is as bad as unnecessary over- complication of

the same issue.

11. If we look down memory-lane a little when Ashok Marketing Ltd. was about to sell these apartments to the multitude of aspirants of these apartments then we would find of the said commercial adventure engaged a number of employees for rendering services to the multitude of the aspirants for the apartments in respect of the common areas and facilities. In such a case even the service rendered to the single individual would come within the mischief of the definition of industry. The analogy of Mr. Sengupta does not reflect the situation in its true perspective. It is not a case of a single individual engaging a number of menial staff for the purpose of enjoyment of a vast and huge property. It is a case where a commercial adventurer constructs a gigantic structure for the sole purpose of selling the same after fragmenting it into pieces, each piece being called an apartment and for that purpose engages such multitude of servants to keep the common areas clean.

12. In the aforesaid situation the services rendered by the countless menials would undoubtedly come within the scope of the definition of industry u/s 2(j) of the 1947 Act. If that be so the same services rendered by the same servants to the succeeding owners who were larger in numeral strength would not change the nature and character of the services rendered and as such, such activity or services would still continue to be an industry so long as it continues to be a systematic activity with or without any profit motive. Even plurality of either employers or employees may be a factor in determining the nature of service rendered in | a given circumstance.

13. The Hon''ble Supreme Court in a very recent decision of Karnani Properties LTd. v. Stale of West Bengal and Ors. reported in 1990 2 CLR 448 has held that a company engaged in the business of real estate providing certain facilities to its tenants would certainly come within the purview of the provisions of the Industrial Disputes Act. It was held in that case that if a company engaged in business of real estate had rented flats in the buildings owned by it and had also rendered to the tenant services like arrangement for supply of water, free supply of electricity, lift etc. then il would undoubtedly come within the definition of an industry and the provisions of the Industrial Disputes Act will be applicable.

14. It has been held that even the distribution of "prasada" on a somewhat large scale in a temple can be called an industry (reference may be made to the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, .

15. It has also been held that although a lone priest in a forlorn temple may not be a workman within the meaning of Section 2(s) of the 1947 Act, yet a multitude of priests, sevaks and pujaries in a temple may convert their status and nature of activity (Reference may be made to the case of Workmen of Baikuntha Nath Debasthan Trust Vs. State of West Bengal and Others,

16. From the above we can safely come to the conclusion that the services rendered by the members of the respondent no. 1 and the respondent Nos. 2 to

7 would amount to an activity which comes under the purview of the 1947 Act.

17. In view of the aforesaid conclusion the other points submitted by Mr. Sengupta are not required to be gone into. However, a few points may be noted in passing.

18. It is undoubtedly true that initially at least it is optional for an owner or owners of a building consisting of apartments to submit to the provisions of the 1972 Act. But once a person or persons so voluntarily submits/submit himself or themselves to the provisions of the Act then the necessary statutory consequences follow. The writ petitioner is an association within the meaning of Section 3(b) of the 1972 Act. Regulation 5 of the West Bengal Apartments Ownership Bye-laws, 1974, hereinafter referred to as the 1974 Bye-laws, lays down the provisions for constitution of a board and defines the broad parameters of its functions.

19. Regulation 11(2) of the said Bye-laws of 1974 provides for appointment of employees by such a board to assist it in the efficient discharge of its business under the Act and the Bye-laws and the remuneration of such employees is to be paid by such board. It is further to be noted that under the express conditions of service the employees appointed by the board are to render services in respect of common areas and common facilities only. It has been expressly provided that no such employee shall render any service to any individual owner of an apartment. As a corollary it follows that the individual owners are to appoint their own domestic servants for the purpose of rendering services to the inside of the apartments. There cannot be two kinds of domestic servants appointed by an employer and as such the employees employed by the board of management must of necessity be treated not as "domestic" servants as envisaged in paragraph 81 of the case of Bangalore Water Supply and Sewerage Board (Supra). It is not a case of cycle repairer and his assistant, a cobbler, a petty handicraftsman, the solicitor, the doctor, the real engineers, the butcher and the candlestick maker.

20. The services rendered by members of the respondent No. 1 and the respondent nos. 2 to 7 make them "workmen" within the meaning of Section 2(s) of the 1947 Act. It has further been admitted that some common spaces are let on hire on specific occasions to the apartment owner son payment of charges. This activity will also come within the meaning of Section 2(j) of the 1947 Act. Parking spaces are let out to the apartment owners for a consideration, which has no manner of connection with the apartments. These spaces are also serviced by the employees employed by the Board of Management. At this point at least the domesticity of such servants vanish.

21. For reasons stated above I am of the opinion that the instant case comes squarely within the scope of the provisions of the Industrial Disputes Act, 1947 and the order of reference should not be set aside. This Court, at this stage, cannot go into merits of the case and it does not like to do so.

22. In the circumstances, this application fails and is rejected. All interim orders are vacated.

23. There will, however, be no order as to costs.

24. After the judgment was delivered, Mr. Sengupta appearing for the petitioner prays for stay of the operation of this order. Stay is granted for a week from date.

25. All parties to act on a xerox copy of this judgment on the usual undertaking.