
(2012) 09 DEL CK 0226
In the Delhi High Court
Case No : Writ Petition (C) 797 of 1997

Indian Medical Assoc.

APPELLANT

Vs

P.O. Labour Court-I and Another

RESPONDENT

Date of Decision : 03-09-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 2(j), 2(j)(ii), 25

Citation : (2012) 09 DEL CK 0226

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Rajeshwar K. Gupta, Ms. Sumati and Ms. Meenakshi, for the Appellant; V.K. Malhotra, Advocate, for the Respondent

Judgement

Hon"ble Ms. Justice Mukta Gupta

1. Aggrieved by the impugned award dated 20th October, 1996 directing reinstatement of the workman with full back wages and continuity of

service, the present petition has been filed. Learned Counsel for the Petitioner contends that the Petitioner does not fall within the ambit of an

Industry. It is a non-profit making Association. The objects of the Association are to promote and advance medical and allied sciences in all their

different branches, to promote the improvement of public health and medical education in India, to maintain the honour and dignity, to uphold the

interests of medical profession and to promote cooperation amongst the members thereof. To meet the objects of the Association, the

memorandum inter alia provides that the Association may hold periodical meetings and arrange conferences of the members of the Association and

the medical profession in general, maintain a library and an Association office, encourage research in medical and allied sciences etc. The Petitioner

is an All India basis Association having its headquarter at Delhi. The learned Trial Court wrongly applied the law laid down in Bangalore Water

Supply and Sewerage Board Vs. A. Rajappa and Others, . It is contended that the dominant nature test which was required to be applied by the

learned Trial Court has not been applied. The Petitioner qualifies for exemption as laid down by the Hon"ble Supreme Court. The Petitioner is not

a government authority. The activities carried out by the Petitioner do not fall within the ambit of the words "Res commercium". The workman was

employed as a technician to look after the Air Conditioning Plant as a professional and a professional would not fall within the ambit of a workman.

Since the Air Conditioning Plant of the Petitioner was closed, the services of the workman were retrenched and he was duly paid the retrenchment

compensation. Thereafter, no other person has been engaged to provide for the service. On the Air Conditioning Plant starting after two years, the

contract was first given to Kohli Services and thereafter to Voltas Services. Thus, the impugned award be set aside.

2. Learned Counsel for workman on the other hand contends that admittedly the plant was never closed. The contention of the Petitioner that it is

not a profit making organization is wholly incorrect as the Management witness has admitted that the premises were provided on rent initially to

Pfizer Company and later on to Central Bank on a lease of more than Rs. 45,000/- per month and the charges for Air Conditioning were separate.

Besides the Petitioner rents out its halls and rooms for conferences etc. from which it earns. The Memorandum of Association provides that the

Petitioner can purchase, take lease of or otherwise acquire, hold, manage, let, sell, exchange, mortgage or otherwise, dispose of movable or

immovable properties, borrow or raise money, invest any money of the Association etc. Thus the contention that it is a non-profit organization is

wholly incorrect. The Trial Court framed four issues which were decided in favour of the workman. The services of the workman were terminated

without any notice. No charge sheet was ever served on the workman. It is incorrectly stated that the Air Conditioning Plant was closed down in

January, 1985. The documents in relation to the services rendered by the M/s Voltas in the year 1986 have been placed on record. The workman

was directed to be reinstated with full back wages and continuity of service by the learned Trial Court however, in view of the stay granted by this

Court the workman was not reinstated and now he has since passed away on 24th April, 2011. Thus the legal heirs of the workman who have already been impleaded as parties be awarded full back wages with interest thereon.

3. I have heard Learned Counsel for the parties.

4. As per the claim of the workman, he was appointed as a Technician against a permanent vacancy and was working as Air Conditioning Plant

Operator with the Petitioner since 3rd April, 1974 and was confirmed after completion of his probation period. The Management required the Air

Conditioning Plant permanently not only for itself but also for tenants of the Management. The Management has got a mini auditorium, which was

given on rent on license fee and thus the plant was never closed. The Management had a regular service contract with Voltas. The services of the

workman were required for rectification of minor defects in the Plant. The services of the workman were terminated without any rhyme or reason

on 30th June, 1989 giving it a colour of retrenchment. Hence the termination was illegal and violative of Section 25 read with Section 2 of the

Industrial Disputes Act, 1947 (in short the ID Act). The workman sent a demand notice however, the conciliation proceedings failed to yield any

result. As per the written statement of the Management it was stated that Shri B.N. Malhotra was not a "workman" as he was appointed as an Air

Conditioning Plant Operator in a supervisory capacity. Further the Management is not an "industry". The workman had misdirected for which his

explanation was called several times and he was not diligent in the services. The Air Conditioning Plant was totally stopped and closed down with

effect from January, 1985 and since then the services of workman became redundant and thus he was retrenched on 30th June, 1985. It was

further stated that the Air Conditioning Plant was lying closed down since the vacation of the premises by M/s Pfizer on 21st January, 1985 and a

limited re-commissioning of the same was done when the premises was let out to Central Bank of India on 28th January, 1987. No fresh person

was employed as Plant Operator and the plant is operated by M/s Refricon Services on contract basis. The following four issues were framed:

1. Whether the Petitioner (Respondent No. 2 herein) is not a "workman" within the definition of Section 2 of the Industrial Disputes Act?

2. Whether the Management is not an "industry" within the definition of S. 2(j) of the Industrial Disputes Act?

3. Whether the Management has employed the services of other agencies to run the air-conditioning plant? If so, its effect.

4. As in terms of reference.

5. Issue No. 1 whether the Petitioner is a workman or not has not been seriously contested before this Court by the Learned Counsel for the

Petitioner. His only contention in this regard is that Shri B.N. Malhotra was a professional and not a workman. This contention on the own showing

and evidence of the Petitioner is misconceived. It was the case of the Petitioner itself before the learned Trial Court that the post was abolished on

the recommendation of the Finance Committee and the services of the workman were retrenched after paying him all dues including retrenchment

compensation. His main thrust is on the Issue No. 2 that the Petitioner herein is not an Industry. In Bangalore Water Supply (Supra) their

Lordships held:

140. "'Industry", as defined in Section 2(j) and explained in Banerji, has a wide import.

(a) Where (i) systematic activity, (ii) organized by cooperation 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 e.g. 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.

141. 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, although not trade or business, may still be "industry"

provided the nature of the activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the

fold of "industry" undertakings, callings and services, adventures "analogous to the carrying on the trade or business". All features, other than the

methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar. It does not matter,

if on the employment terms there is analogy.

142. 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 off 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, 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 non-employee 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.

143. 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 case [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

Corporation of Nagpur 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, not the welfare activities or

economic adventures 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.

6. A perusal of the judgment and the Objects and Memorandum of Association of the Petitioner would show that though profit making is not the

main object of the Petitioner, however, certainly it is an incidental object and for which purpose the Petitioner has built up number of properties

from which rental/license fee are being received. Thus the dominant purpose test as has been contended by the Learned Counsel for the Petitioner

would have no application. Their Lordships held that even cooperative societies, research institutions and other kind of establishments cannot be

exempted from Section 2(j) of the ID Act if they fulfill the triple test. It may be noted that the absence of profit motive or gainful objective is

irrelevant. One of the authorized activity of the Petitioner is to purchase properties and maintain them. Thus, the staff which would be employed for

the purposes of maintaining the said buildings which earns profit as well cannot be said to be exempted from the ambit of being employed in an

industry. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between the employer and the workmen,

the range of this statutory ideology must inform the reach of statutory definition and be taken to the logical conclusion without any pre-conceived

notions. Even professions, clubs, educational institutions, cooperatives, research institutes, charitable projects etc., if they fulfill the triple test cannot

be exempted from the scope of Section 2 (j)(ii) of the ID Act. Only restricted category of professions, clubs, cooperatives and even gurukulas and

little research labs may qualify such exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no

employees are entertained. Where there are a number of complex activities and some of which qualify for exemption and the others do not, even

then the predominant nature of services and the integrated nature of the departments will have to be looked into. This activity run by the Petitioner

is certainly capable of entering into the world of "Res-commercium" as contended by the Learned Counsel for the Respondent. It may be noted

that the Petitioner has framed its staff services rules for employing various staff. One of the objectives of the Association is to promote

improvement of public health and medical education in India. Thus in view of the fact that one of the objectives is improvement of public health and

medical education and the Petitioner having staff service rules which were exhibited as Ex. MW1/3, I find no infirmity in the learned Trial Court

coming to the conclusion that the Petitioner is an industry.

7. As regards the issue no. 3 it may be noted that the Standing Finance Committee recommended abolition of post of AC plant operator where

after the service of the Petitioner were retrenched. However, the Management witnesses during the cross-examination admitted that an Air

Conditioning Plant was being maintained by M/s Voltas Limited. He admitted that the services of the Air Conditioning plant were used for the

tenants i.e. the Central Bank of India, Zonal Offices and computer centre. He further admitted that the services of the Air Conditioning Plant were

being used for various meetings etc in the halls. Though the Management has not employed any person, however, they have given the contract of

maintaining the Air Conditioning Plant to M/s Kohli services to operate the Air Conditioning Plant and thus the retrenchment of the claimant can be

safely be held to be a colourful exercise as held by the learned Trial Court.

8. Having regards to the facts and circumstances of the case I find no infirmity in the impugned award much less an illegality. The workman attained

the age of superannuation on 1st October, 2000 and has since passed away on 24th April, 2011. The award provided for reinstatement with full

back wages and continuity of services. Since the reinstatement is not possible, the legal heirs of the workman Shri B.N. Malhotra will be entitled to

full back wages till the date of superannuation after deducting the amount already received by the workman. The Petitioner is directed to make the

payment within four weeks from today. Petition is disposed of accordingly.