
(1973) 09 BOM CK 0002

In the Bombay High Court

Case No : Spl. Civil Application No. 2093 of 1970

Indian Sailors" Home Society

APPELLANT

Vs

R.D. Tulpule and Another

RESPONDENT

Date of Decision : 06-09-1973

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12(5)

Citation : (1974) 2 LLJ 227

Hon'ble Judges : S.B. Bhasme, J;P.B. Sawant, J

Bench : Division Bench

Judgement

Sawant, J.—By this petition filed under Arts. 226 and 227 of the Constitution, the petitioner-Indian Sailors" Home Society, challenges the order dated 26-5-1970 passed by the first respondent-Industrial Tribunal in Reference (IT) No. 70 of 1968. The facts leading to the petition are as follows :

2. Sometime in the year 1967, the employees of the petitioner-society raised a dispute in respect of salaries, dearness allowance and other benefits. The said dispute was taken in to conciliation and as the conciliation ended in failure, the Government of Maharashtra in exercise of its powers under S. 10(1)(d) read with S. 12(5) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act) referred the said industrial dispute for adjudication to the Industrial Tribunal by its reference order dated 17-2-1968. The union representing the employees filed its statement of claim on 12-4-1968 and the petitioner-society filed its written statement on 22-4-1968. In the written statement the petitioner-society raised a preliminary point that the petitioner-society was not an "industry" within the meaning of the said Act and, therefore, the Tribunal had no jurisdiction to proceed with the dispute referred to it. The union resisted the said preliminary point and the parties filed their affidavits in support of their respective contentions. On the basis of the affidavits and after hearing the parties, the first respondent-Tribunal passed the impugned order holding that the petitioner-society was an industry within the meaning of the said Act. The Tribunal held that

the petitioner-society was rendering to the seamen such services as accommodation, food, lodging facilities and entertainment and this activity took the characteristics of a trade or business, since similar activity is being carried on by commercial establishments like hotels. According to the Tribunal further, it was immaterial that the income derived from rendering such services was utilised for the purpose of bettering the future of seamen and to promote their interests. Thus the Tribunal solely relied upon the nature of the activity, viz., rendering of material services enumerated above and held that the society was an industry. It may be mentioned here that it is agreed before us that the society was not serving food to the seamen and the Tribunal is wrong in referring to the serving of food by the society, in its order.

3. Before we examine the rival contentions of the parties, it will be worthwhile to note the admitted facts with regard to, the aims and objects of the petitioner-society and the activities carried on by it. The Indian Sailors' Home Society, was the out-come or lengthy consultations between the Government of India and the erstwhile Government of Bombay as to the most suitable way of perpetuating the memory of the Indian seamen who lost their lives in service during the First World War of 1914-1918. The project of building Indian Sailors' Home was provisionally approved of as long as 1922 but the active steps to bring it into existence were taken only five years thereafter. The petitioner-society is a successor of the Indian Sailor's Home Society which was incorporated under the Indian Companies Act, 1913, on 3rd May, 1933 as a private company (an association not for profit). In 1946, out of the original 50 members more than half were either dead or had permanently left Bombay and it was found impracticable to get the shares of these ineffective members transferred to other persons more interested in the welfare of seamen. The said society was, therefore, taken into members' voluntary liquidation and with the concurrence of the Government of India was reincorporated under the same Act and with the same aims and objects, on 10th August, 1948. The society became a public company with effect from 28th March, 1961, by virtue of the provisions of sub-s. (1) of S. 43A of the Companies Act, 1956.

4. The aims and objects of the petitioner-society are stated in its memorandum of association. Clauses (4) and (6) of the memorandum of association amongst other things, state as follows :

"4, The objects of the society are :

(a) to provide for the accommodation, recreation and general welfare of seamen frequenting or visiting the Port of Bombay and also to provide a refuge for seamen who are shipwrecked and in distress and generally to protect and further the interests of seamen in such manners as may from time to time appear necessary or advisable and for these purposes to maintain, equip and staff one or more home or homes for seamen in Bombay or adjacent thereto and such other premises as may be necessary or convenient for the objects of the society provided that no distinction on account of religions, denomination or caste shall

be made in admitting seamen to the aforesaid premises and to participation in the amenities offered by the society;

(b) to maintain, or assist in maintaining, the said seamen or any of them during such time as they shall be residents of any such home;

"....."

"6. The income and property of the society whensoever derived shall be applied solely towards the promotion of the objects of the society as set forth in this memorandum of association and no portion thereof shall be paid or transferred directly or indirectly by way of a dividend, bonus or otherwise howsoever by way of profit to the members of the society. Provided that nothing herein shall prevent the payment in good faith of remuneration to any officers or servants of the society or to any members of the society or other persons in return for any services actually rendered to the society."

Clause (8) of the said memorandum makes it clear that upon the winding up or dissolution of the society, if there remained, after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be distributed among the members of the society, but subject to any trusts upon which the same may have been held by the society immediately before such winding up or dissolution, the same shall be deemed to belong to the Government of India and its disposal shall be at the sole and uncontrolled discretion of the Government.

Clause (11) of the memorandum states that the authorised capital of society is Rs. 100 and is divided into 100 shares of Rs. 1 each. By virtue of Art. 7 of its Articles of Association, the management of the petitioner-society vests in the Committee consisting of not less than 18 and not more than 22 members inclusive of the ex-officio members. The members of the Committee are not required to hold any qualification shares. Article 10 of the said Article provides for the ex-officio members of the Committee who are members by virtue of their holding certain public offices. The ex-officio members of the Committee are as follows :

"(a) The principal Officer, Mercantile Marine Department, Bombay.

(b) The Shipping Master, Bombay.

(c) The Principal Seamen's Welfare Officer, Bombay.

(d) One person nominated by the Government of Bombay.

(e) One person nominated by the Bombay Port Trust.

(f) Two persons nominated by the Bombay Chamber of Commerce.

(g) Two persons nominated by the Indian Merchants' Chamber, Bombay.

(h) One person nominated by the Indian National Steamship Owners' Association.

- (i) Five persons nominated by the Government of India from the representatives of the recognised trade unions of Indian Seamen in Bombay.
- (j) One person nominated by the Royal Bombay Seamen's Society,
- (k) One Honorary Treasurer appointed by the Committee.
- (l) One or two Joint Honorary Secretaries appointed by the Committee"

The Authority nominating an ex-officio member may from time to time revoke the nomination and nominate another person.

5. In addition to the ex-officio members provided in Art. 10, Art. 11 of the said Articles provides that there may not be more than three members to the Committee of whom one may be elected by the patrons and one by the members of the society from amongst their own number, and one co-opted by the Committee from persons interested in or connected with institutions doing welfare work in Bombay. At present there are 42 share-holders holding 63 shares of Re. 1 each.

6. The petitioner-society carries on its activities in two buildings. One is called "Home Building" and the other "Hostel Building". The site on which the home building stands was presented by the Bombay Port Trust as their contribution towards the capital cost of the scheme approved of in 1922 as stated earlier and the building thereon was constructed earlier entirely out of donations given by the Union and State Governments and other donors. The hostel building was entirely constructed by the Union Government on their own land and at their cost and was handed over to the petitioner-society on a nominal lease of Re. 1. The lease was at first for 25 years and it is an admitted fact that this lease is being renewed for another 25 years. This hostel building was constructed by Government from the War Memorial Fund for Indian merchant seamen and the expenses thereof are partly met from interest on the amount, which remained surplus after construction and which is invested in Government securities.

7. There are about 600 beds in the hostel building and 400 beds in home building and it is only the sailors or seamen who are entitled to the benefits of the amenities afforded by the society at these two buildings. The services or amenities which are rendered by the petitioner-society at these two buildings are accommodation for the purpose of residence, facilities for study, reading room and library, indoor and outdoor games, film shows and radio, store-rooms, safe deposits, sewing machine for stitching one's own clothes, water-coolers, medical aid, etc. For all these amenities, only a nominal rate is charged. Till 1965-66 the transit crew was charged Re. 1 per head per day and off-article seamen were charged 00-25 paise per head per day. These charges were subsequently raised and at present they are Rs. 4 and 00-50 paise, respectively. However, seamen in destitute and who were unable to pay any charges are given all these facilities free of charge. It is further an admitted fact that these charges are very low and are not sufficient to cover the costs of the services rendered by the society. The

income and expenditure statement for the years 1965 and 1966 (which was before the Tribunal) showed that in 1965 the charges recovered from the sailors for the amenities rendered to them were Rs. 76,306 whereas the expenditure incurred for providing the amenities was Rs. 1,60,600. In 1966, the charges recovered from the sailors were Rs. 74,077 and the corresponding expenditure was Rs. 1,86,327. Similar is the pattern for the subsequent years but since these figures were not before the Industrial Tribunal, we may not take them into account for the purpose of this petition. However, it is agreed that roughly the charges recovered are about one-third of the expenditure incurred for rendering the services. It is also admitted that the difference in the cost of providing these services to the sailors and the expenses required to be incurred for providing the same, is made up from donations received from the Government, the semi-Government bodies and private institutions and a major portion of the source of income of the petitioner-society is the said donations. These donations by their very nature keep fluctuating. There is one more factor which must be noted here and it is that the interest received from the War Memorial Fund has got to be utilized only for the expenses of the hostel building and cannot be spent for home building and, therefore, two accounts are prepared to show the income and expenditure for home building and hostel building separately.

8. From the above facts it is clear that the petitioner-society is a charitable institution devoted exclusively to the welfare of the seamen and that no person other than a seaman can avail of the benefits of the amenities provided by the society. The capital in the form of the home and hostel buildings, has come exclusively out of the donations and the major portion of the expenses of the administration and management of both these buildings and of the costs of providing the services, comes out of the donations as stated hereinabove.

9. It is against the background of these undisputed facts that we have to examine the rival contentions raised before us.

10. Mr. Ramaswamy who appears for the petitioner-society relies on the aforesaid facts and urges that the activity carried on by the petitioner-society is not in the nature of a trade or business but is purely of a charitable nature confined exclusively to the welfare of the sailors and, therefore, the society is not an industry within the meaning of the said Act. On the other hand, Mr. Sowani who appears for the employees submits that the society is an undertaking and the activity carried on by it is analogous to trade or business since the services rendered by it are similar to those rendered by any commercial hotel. According to Mr. Sowani, although it is an admitted fact that the charges which the sailors have to pay for the services rendered to them are not sufficient to cover the costs, there is nothing in the constitution of the society which prohibits it from raising the said charges and thus making its activity profitable. Mr. Sowani further states that although it is true that the building are donated to the society, they should be treated as capital provided by Government to the society to run its business. Both the sides have relied upon the following decisions of the

Supreme Court.

11. Secretary, Madras Gymkhana Club Employees" Union Vs. Management of the Gymkhana Club, ; (Re. Madras Gymkhana Club), Cricket Club of India Vs. Bombay Labour Union and Another, ; (Re. Cricket Club of India), (3) The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi, , The Bombay Panjrapole, Bhuleshwar Vs. The Workmen and Another, and (5) Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal,

12. In Secretary, Madras Gymkhana Club Employees" Union Vs. Management of the Gymkhana Club, , the Supreme Court has held that the fact that the Madras Gymkhana Club is organised as an industry on a vast scale with multifarious activities and that facilities of accommodation, catering, sale of alcoholic and non-alcoholic beverages, games, etc., are proved and that the club runs parties at which guests are freely entertained and that the club had established reciprocal arrangements with other clubs for its members are not sufficient considerations to establish that the club is an industry within the meaning of the said Act. According to the Supreme Court, this must be done as a part of trade or business or as an undertaking analogous to trade or business. They found that this element of trade or business was completely missing in a members" club. After reviewing the various cases till then decided, the Court stated that "the principles so far settled come to this : " Every human activity in which enters the relationship of employer and employees is not necessarily creative of an industry. Personal services rendered by domestic and other servants, administrative services of public officials, services in aid of occupations of professional men such as doctors and lawyers, etc., employment of teachers and so on, involve relationship of employer and employees but must be excluded because they do not come within the denotation of the term "industry". According to the Court further it was clear that before the work engaged in could be described as an industry, it must bear the definite character of "trade" or business or manufacture or calling or must be capable of being described as an undertaking resulting in material goods or material services. It is not necessary that the employer must always be a private individual or individuals. The act in terms contemplates cases of industrial disputes where a local authority or public utility service may be the employer. But Government cannot be regarded as an employer within the Act if the operations are governmental or administrative in character. The local authorities also cannot be regarded as industry unless they produce material goods or render material services. Where the activity is to be considered an industry, it must not be casual but must be distinctly systematic. The labour required must be productive and the workmen must be following an employment, calling or industrial avocation. The Court further referred to the cases of Bengal Club Ltd. Vs. Santi Ranjan Somaddar and Another, ; and Royal Calcutta Golf Club Mazudur Union Vs. State of West Bengal and Others, , and distinguished those cases on the ground that they were cases of incorporation companies running clubs for profit and as business. The Court thereafter

observed that the fact that the affairs of the club are or organised, and that there is production of material and other services and in a limited way production of material goods mainly in the catering department are not circumstances truly representative in the case of the club because the services are to the members themselves for their own pleasure and amusement and the material goods are for their consumption. In other words, the club exists for its members. The Court also stated that in such circumstances the fact that occasionally strangers also took benefits from the services of the club was not material inasmuch as the strangers took such invitations only on invitation of members and that no one outside the list of members has a right to take advantage of these services. The Court lastly observed that although the material needs or wants of a section of the community are catered for in the club that was not enough. According to the Court this must be done as part of trade or business or as an undertaking analogous to trade or business.

13. In Cricket Club of India Vs. Bombay Labour Union and Another, , following the decision in the case of the Madras Gymkhana Club case and dealing with the contention raised on behalf of the employees that residential accommodation was provided to the members on charge recovered from them, the Supreme Court observed that apart from members, no one was allowed to stay in the residential rooms and that in exceptional cases where some important visitors came to the club or competitors taking part in tournaments visited the place, they were permitted to stay in the residential rooms, but, in such cases, they were all made honorary members of the club. The facility was thus availed of by them in the capacity of members of the club, even though that membership was honorary. The Court further took into consideration the fact that there was evidence given on behalf of the club that the charges for the residential accommodation with catering were much lower in the club than the charges made for similar facility in any decent hotel in Bombay where comparable accommodation might be provided and that this facility at the concessional rates was exclusively meant for its members. In that case the Court further observed that "what we have to see is the nature of the activity in fact and in substance. Though the club is incorporated as a company, it is not like an ordinary company constituted for the purpose of carrying on business. There are no shareholders. No dividends are ever declared and no distribution of profits taken place. Admission to the club is by payment of admission fee and not by purchase of shares The membership is not transferrable like the right of share-holders. There is the provision for expulsion of a member under certain circumstances which feature never exists in the case of a shareholder holding shares in a limited company. The membership is fluid. A person retains rights as long as he continues as a member and gets nothing at all when he ceases to be a member, even though he may have paid a large amount as admission fee The club, in fact, continues to be a members" club without any shareholders and, consequently, all services provided in the club for members have to be treated as activities of a self-serving institution."

Thus in the aforesaid decisions the Supreme Court held that the Madras Gymkhana Club and the Cricket Club of India were not an industry.

14. In the decision reported in 1970 II L.L.J. 267, the Supreme Court had to consider whether the Safdarjung Hospital and Tuberculosis Hospital both of New Delhi and the Kurji Holy Family Hospital at Patna were industry within the meaning of the said Act. On facts the Court came to the conclusion that the Safdarjung Hospital was not embarked an economic activity which could be said to be analogous to trade or business. There was no evidence that it was more than a place where persons could be treated. It was a part of the functions of Government and the hospital was run as a department of Government. As regards the Tuberculosis Hospital, the Court found that it was not an independent institution but was a part of the Tuberculosis Association of India. The hospital was wholly charitable and was a research institute. The dominant purpose of the hospital was research and training, but as research and training could not be given without beds in a hospital, the hospital was run. Referring next to the Kurji Holy Family Hospital, the Court concluded that the objects of the said hospital were entirely charitable. It carried on work of training, research and treatment and its income was mostly from donations and distribution of surplus as profits was prohibited. On these findings the Court held that none of the three hospitals was an industry within the meaning of the said Act.

15. In *The Bombay Panjrapole, Bhuleshwar Vs. The Workmen and Another*, , the Supreme Court was called upon to decide as to whether the Bombay Pinjrapole was an industry. In that case it had come in evidence that the Bombay Pinjrapole although originally started as a charitable institution solely devoted to the welfare of the sick and disabled animals, had subsequently deviated from its object and had started the activity of producing and selling milk. That activity assumed sizable proportion and a sizable source of income of the Bombay Pinjrapole happened to be from the sale of milk. Adverting to these circumstances, the Court observed as follows :

"In our view, the facts justifiably lead to the conclusion that the institution deliberately diversified its objects from only tending to the sick, infirm or unwanted cattle by adopting the policy of keeping cattle not merely for their own sake but for the sake of improving the cattle population committed to its care with an eye to serve human beings by making large quantities of good milk available to them and thereby getting an income which would augment its resources. It pursued its policy just as any dairy owner would by having a few good quality bulls to impregnate the cows and thereby ensuring a steady production of milk and also improve the quality of the progeny.

We have then to consider whether on the above facts an inference ought properly to be drawn that the activities of the Pinjrapole constituted an industry. It is not necessary to go through the plethora of cases decided by this Court to find out whether the Tribunal had come to a proper conclusion. Although there is no decision of this Court arising out of the affairs of Pinjrapole, there are several

decisions dealing with the question as to whether hospitals constituted industries. The contention of learned counsel for the appellants was that the main and chief object of the appellant in situation being the keeping and fostering of animals, incidental activities ought to be disregarded and the institution ought to be considered as a hospital. If the activities relating to the production of milk could be said to be incidental to the maintaining of sick, infirm and diseased or rejected cattle, the argument would, in our opinion, rest on solid foundation."

The Court then referred to the Madras Pinjrapole Vs. Their Workmen and Another, ; and pointed out the similarity between the Madras Pinjrapole case and the Bombay Pinjrapole case. The Court observed in that connection as follows. -

"..... Save for the fact that the Madras Pinjrapole definitely and expressly changed its objective by starting a dairy farm and purchasing milk cows and stud bulls there is very little difference between the facts of the case before us and those in the Madras Pinjrapole case. In the present case only one stud bull was purchased but the activities pursued by the Bombay Pinjrapole make it clear that they were pursuing the same kind of activity, namely, that of using stud bulls for the purpose of breeding healthy cattle including cows so as to be able to make a very sizable income from the sale of milk. For the last few years from 1958 to 1962, the number of milch cows was always considerable which could only be accounted for by the fact that from time to time the place of cows which had become dry was being taken up by cows fecundated by the bulls maintained for the purpose of keeping up a steady supply of milk. We have already referred to the fact that the value of milk supplied to the sick and infirm cattle was infinitesimal compared to the sold in the market. The expenses incurred in connection with the treatment of sick and infirm animals was also negligible compared to the total expenses of the institution. The number of men employed for such treatment was very small at all times. The mere fact, therefore, that the Pinjrapole never purchased milch cows and never purchased stud bulls except once, makes no difference to the question as to whether their activity of maintaining cows and bull could only be considered as an investment. It was certainly carried on as a business although it was not pursued in the same way as astute businessmen only, out to make profit, would, namely, get rid of the animals which were no longer fit for any use. The value of the milk supplied for the last 3 or 4 years was well in excess of Rs. 1 lakhs per annum and this could only be possible if the cows and buffaloes had been kept and maintained not merely to keep them alive but with the idea of getting as much production out of them as possible".

On these findings, the Court held that the Bombay Pinjrapole was an industry within the meaning of the said Act.

16. In Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal, , the Supreme Court had to consider whether the Federation of Indian Chambers of Commerce and Industry

was an industry. In that case the Supreme Court referred to the objects of the Federation and pointed out that the said objects were "to promote Indian business in matters of inland and foreign trade, transport, industry and manufacture, finance and all other economic subjects and to encourage Indian banking, shipping and insurance; to promote support or oppose legislation or other action affecting economic interests and in general to take the initiative to assist and promote trade, commerce and industry, to provide for arbitration in respect of disputes arising in the course of trade, industry, or transport and to secure the services of trained technical and other men to that end, of necessary or desirable to conduct, undertake the conduct of and participate in national and international exhibitions, to set up museums or show-rooms, to exhibit products of India in other countries and to participate in such activities, and to attain these advantages by united action which each member may not be able to accomplish in its separate capacity. In furtherance of these objects, according to the Court, the Federation publishes a fortnightly review, organised two exhibitions in which huge profits were made, though no doubt in collaboration with the Government. It has constituted Tribunals for arbitration. It is claimed in the brochure issued by the Federation under the titled "Organisation and Functions" that the membership of Federation confers certain rights and privileges, such as for instance it "endeavors to take up with the concerned authorities the specific difficulties experienced by members in their day-to-day business". It has entered into arbitration agreement with America, Russia, German Democratic Republic, Poland and Hungary for the purpose of having the dispute of claims arising out of or relating to contracts between nationals of India and the countries concerned for being settled by arbitration. It promotes India's exports and economic development. It undertakes publication of periodicals for the benefit of the businessmen, big or small; it brings out fortnightly review in which there is a section for trade enquiries of special interest to importers and exporters. This facility is also thrown open to the non-members who can subscribe to the bulletin though it is sent free to all the constituents of the Federation. A cyclostyled publication entitled "Export News" is also issued every fortnight and gives general hints to the exporters as to how to promote their exports. It appears from the report of proceedings of the Executive Committee for the year 1965, that more specific issues were taken up direct with the department of Government concerned relating to export performance and shortages of imported raw materials, components and machinery with a view to alleviate difficulties in the case of specific products. It also taken up matters relating to the grant of more facilities abroad, introduction of concessions such as railway freights, etc. Among important ad hoc matters taken up were cargo seized by Pakistan in the course of hostilities during 1965. It also facilitates the resolution of various difficulties in respect of foreign exchange and export promotion which are being experienced by the trade in respect of foreign exchange allocation for export promotion purposes and made several suggestions regarding granting of foreign exchange for business facilities abroad and the need to avoid delay in sanctioning foreign exchange, increase in existing

scales of allowances, liberal allocation of the after sales service. It took up the case of the established exporters other than manufacturers who were barred from entering into export trade in ground-nut oil cakes. It sponsored the cases of the exporters of precious stones to allow reasonable time for submission of their reports and calling back the consignments if there was no sale. In company law matters also it sponsored the cause of the various companies and the difficulties that they were encountering. It would appear that on the request of Goa Mineral Ore Exporters' Association, the Committee requested the Government to give the matter sympathetic consideration. It also took up cases of the contractors' bills where there was inordinate delay in payment of contractors' bill for lack of funds. In the report for 1964 it was stated that where in certain cases import licences were issued subject to the condition that the validity of the licences depended on the production of the Income Tax. Clearance Certificate in spite of the fact that the applicant and quoted the registered member in his Income Tax verification, the Federation requested the Chief Controller of Imports & Exports to discontinue the practice in future. Where the import policy for the year 1964-65 allowed 5% quota for silk bolting cloth to established importers, representation to the Chief Controller of imports and Exports was made for this cloth to be granted to flour millers direct whenever they apply for it, if necessary on an ad hoc basis. The case for freight concession for iron ore exported from Rajasthan for extending it to high grade ore as well was also taken up. It was further pointed out that the company management and other concerned with company law have frequently complained of many practical difficulties in complying with the provisions of the Company Act, Rules, etc. In order to help the Federation constituents in such matters and provide necessary service to them, the Federation has been maintaining a separate division, namely, the company division to which members were requested to forward their problems and difficulties. Principal bodies were also requested to advise their constituents in regard to the services offered by the Federation". Relying on these objects and activities the Supreme Court held that the Federation carried on systematic activities to assist its members and other businessmen and industrialists and even to non-members, as for instance in giving them the right to subscribe to their bulletin, in taking up their cases and solving their difficulties and in obtaining concessions and facilities for them from the Government and held that these activities are business activities and, therefore, the Federation was an industry. In coming to this conclusion the Supreme Court negated the contention on behalf of the Federation that there was no profit behind the activities of the Federation and hence it could not be called an industry. The Supreme Court held that in such circumstances whether the Federation made profit or not was immaterial since it was organised to help its members in their business with a view to earn profit.

17. The ratio which emerges from the aforesaid decisions can be summed up as follows :

Whether in a given case, an activity amounts to an industry within the meaning

of the said Act will depend upon one or a combination of more than one of the following among other considerations depending upon the facts of each case, (a) whether the objects with which it is carried on are charitable and whether it has deviated from the said objects and to what extent, (b) what are the main sources of its income and whether it is run on donations, etc., and to what extent, (c) whether it makes profit and is organised with an intent to make profit, (d) whether the charges for the material goods and services rendered are nominal and low compared to their cost and market prices, (e) the provision regarding the disposal or distribution of profits or surplus/income, restrictions if any on such distribution, (f) whether it is organised like a self-serving members' club for rendering goods and services exclusively to the members with a view to their amusement and enjoyment, charging them for such goods and services nominal or low charges and without intending to run it as business, and make profit out of it, (g) whether although organised as a members association, like a chamber of commerce, it is run as a business, rendering services and undertaking activities with a view to enable its members to run their business profitably, and (h) the nature and character of its management.

18. Examined in the light of the aforesaid consideration, the petitioner-society does not answer the characteristics of an industry within the meaning of the said Act. The petitioner-society is a charitable institution devoted exclusively to the welfare of the seamen and its activities are confined to the said charitable objects. Its entire capital as well as its maintenance expenses to the extent of about two thirds come from donations. The charges for amenities are low or nominal compared to their costs and market rates. In fact the cost of the services rendered are subsidised from the donations. The society further gives free of charge all those amenities to the needy and destitute seamen. It is only the seamen and none else that can take advantage of these amenities. The moment a seaman ceases to be a seaman he is disentitled to the said benefits. The income and property of the society is to be applied solely towards the promotion of the objects of the society and no portion thereof is to be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to its members. Upon its winding up, the property remaining surplus is to belong to the Government of India. It does not make profit and is not organised as a business to make profit either for itself or for its members or its beneficiaries the seamen. It is managed by the nominees of the Government and public bodies interested in the welfare of the sailors. If a comparison is needed the petitioner society is akin to or analogous to a members' self-serving club since the benefits of the society are confined exclusively to the sailors and the benefits are meant for making their stay comfortable.

19. Mr. Sowani for the workmen, however, argues that the petitioner-society cannot be called a charitable institution because there is no prohibition or restriction on the society to increase the charges and make it profitable and run it as trade or business like any other hotel is run. We are unable to accept this contention firstly, because there is nothing before us to show that the petitioner-

society can do so without impairing the objects for which it has been established. Secondly, it is not the potentiality of the society to run its activities as trade or business that we have to take into consideration in deciding whether the present activities run by it are in the nature of trade or business. On the other hand its objects and the manner in which it is running its activities at present should guide the Court in coming to the conclusion on the question. But even assuming that it is possible for the petitioner-society to enhance the charges for the services rendered to the sailors and to run it as any other hotel, whether the society will then fall within the definition of industry or not will depend on whether it comes within the ratio of the Bombay Pinjrapole case reported in *The Bombay Panjrapole, Bhuleshwar Vs. The Workmen and Another*, . It must be noted that the Supreme Court in that case had held that the Bombay Pinjrapole was an industry because the Bombay Pinjrapole had deviated from its original objects and it diversified its activities into that of production and sale of milk and the income from this diversifies activity was so considerable that the main object of attending to the welfare of the sick and disabled animals had relegated to the background and the diversified object had become the main activity of the Bombay Pinjrapole. If and when the petitioner-society so deviates from its object by enhancing the charges and running its activities like any other hotel it may be possible to show that the petitioner-society was running a trade or business. As the facts stand today it cannot be said that the petitioner-society is not pursuing its charitable objects and is running its activities as trade or business. Mr. Sowani further contends that the petitioner-society cannot be compared to that of a self-serving club of members as had been held by the Supreme Court in the *Cricket Club of India* and the *Madras Gymkhana* cases. Now, it is true that the sailors who get the benefit of the amenities are not members of the petitioner-society. By its very nature the beneficiaries remain a fluctuating body and no sailor receives the benefit continuously as a member does. But it must be noted in the first instance that the beneficiaries, viz., the sailors are an exclusive section of the people and they alone are entitled to the benefits of the activities run by the society. Secondly, on the sailors ceasing to be a sailor he ceased to receive any benefit from the society. No person other than a sailor, not even a guest of the sailor is entitled to receive any benefit. Since the body of the beneficiaries is fluctuating it is not possible to have their representatives as such on the managing Committee which manages the petitioner-society. It is on account of the fluctuating nature of the body of the beneficiaries that at one time the activities of the society came to an end and, therefore, it was subsequently taken over by the present society, and advisedly the Committee of the management consisted mainly of the nominees of the Government and recognised public bodies interested in the welfare of the seamen. It is understandable that the beneficiaries being a fluctuating body no representation as such could be given to such beneficiaries as it was impracticable. This fact, however, will not make the management of the society less representative of the sailors' interests or less interested in their welfare. It is further true that the sailors who receive the benefit do not pay any membership or entrance fee; but that again is not a

material factor to determine as to whether it is a self-serving institution. In our opinion, therefore, although the society cannot be called strictly as a self-serving institution, or as a members' club, its history, its aims and objects, the manner in which it is organised and it carries on its activities show that the petitioner-society is analogous to self-serving institution of the members. However, nothing much turns on this comparison, since our conclusion that the society is not an industry is not based on this comparison alone, but as has been stated earlier, rests on the various other considerations which are pointed out earlier.

20. Mr. Sowani then pointed out that petitioner-society is registered under the Bombay Shops & Establishment Act as residential hotel and there are certain restrictions imposed upon its working, viz., the duty hours, holidays, etc., for the workmen. It is true that the society is registered as residential hotel as defined under S. 2(24) of the Bombay Shops & Establishment Act. The definition of a residential hotel in the Bombay Shops & Establishment Act is confined to the purpose of that Act and under the provisions of that Act it is compulsory to register the establishment run by the society as a residential hotel. The said registration by itself, therefore, does not make the society an industry within the meaning of the said Act, i.e., the Industrial Disputes Act.

21. Mr. Sowani also points out that in the Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club, the Supreme Court has observed that a self-serving institution of members must be carrying on activities for the pleasure and enjoyment of the members and should not carry on activities which render material services. In the present case according to him what are rendered are material services and they are not for the pleasure or enjoyment of the sailors. In the first instance, in addition to providing temporary accommodation to the sailors, the society also gives them various services for their comfortable and enjoyable stay at the "Home Building" and the "Hostel Building". This is evident from the services which it renders and which are enumerated hereinabove. Secondly, we do not find that in the Madras Gymkhana Club case, that Supreme Court has made any such distinction in the services to be rendered by a members' club. The ratio of that decision also does not permit making of such distinction.

22. We are, therefore, of the opinion that the petitioner-society is not an industry within the meaning of the said Act.

23. The first respondent-Tribunal has held that the petitioner-society is an industry only because it renders material services similar to those rendered by any other hotel. The Tribunal has completely ignored the fact the rendering of material services is not the only test to be applied to find as to whether such an activity amounts to an industry within the meaning of the said Act. It must further be shown that such activity or rendering services is carried on either as trade or business or as analogous to trade or business. As we have shown above the activity of rendering of material services by the petitioner-society is not carried on by the society either as trade or business or as analogous to trade or

business.

24. In the result, we allow the petition, set aside the impugned order dated 26th May, 1970 and make the rule absolute in terms of prayer (a). The Tribunal will dispose of the reference before it according to law in the light of this decision. In the circumstances there will be no order as to costs.