
(1966) 11 MAD CK 0013
In the Madras High Court

Madras Pinjrapole

APPELLANT

Vs

Their Workmen and Another

RESPONDENT

Date of Decision : 18-11-1966

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1967) 2 LLJ 399

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

Kailasam, J.—This petition Is filed by the management, Madras Pinjrapole, Madras, for the issue of a writ of certiorari calling for the

records of the presiding officer, labour court, Madras. In Industrial Dispute No. 103 of 1958 and to quash Its findings that the Madras Pinjrapole

is an Industry by Its order dated 2 March 1965.

2. The workmen of the Madras Pinjrapole raised an Industrial dispute against the management of the society and the dispute was referred by the

Government of Madras by G.O. Ms. No. 36201, dated 22 September 1058, to the labour court, Madras. In the dispute the management raised a

preliminary objection that the reference was bad, as the provisions of the Industrial Disputes Act, 1947, did not apply to the Madras Pinjrapole,

which was engaged in rendering service to animals and not engaged in any manufacture"" of goods or products. 1C also contended that the

workmen of the Madras Pinjrapole were not ""workmen"" within the meaning of Section 2(s) of the Industrial Disputes Act, 1917. The labour court,

by Its award dated 1 August 1959. held that the Madras Pinjrapole was an industry within the meaning of the Industrial Disputes Act, 1947.

Aggrieved at this decision of the labour court, the management of the Madras Pinjrapole filed a Writ Petition No. 3 of 1960 vide 1960 II L.L.J.

186. Ramachandra Ayyar, J. (as he then was), who heard the petition, held that the Madras Pinjrapole did not contemplate any trade or business,

and, as the main object of the pinjrapole was not to satisfy human wants, fit was not an Industry within the meaning of Section 2(j) of the Industrial

Disputes Act, 1947. The workmen took the matter up in appeal, and in Workmen employed in the Madras Pinjrapole Vs. Management of the

Madras Pinjrapole and Another, a Bench of this Court held that, though the Institution itself might not be an industry, a separate activity of such

Institution, which comprised an individual unit of activity such as, for instance, a dairy farm, could fall within the definition. The Bench remanded the

case to the labour court for a finding on the fact whether by reason of the resolution dated 23 January 1937, the principal activity of the Institution

had materially altered. After remand, the labour court reheard the petition and gave an award on 2 March 1965, holding that the Madras

Pinjrapole itself could be construed as an industry and that the dispute between the workmen and the management was an industrial dispute.

Against the order of the labour court holding that the Madras Pinjrapole is an industry the present writ petition IB filed by the management of the

Madras Pinjrapole.

3. The Madras Pinjrapole is a charitable society registered under the Societies Registration Act of 1860 and located at No. 50, Kunpur High

Road, Madras-12. The society was founded in the year 1906 under the auspices of His Excellency to Hon^{ble} Sir Arthur Lawley, the then

Governor of Madras, and Mr. Justice Boddam. The society itself was started with the generous donations given by philanthropic members of the

public. The object of the pinjrapole was to provide shelter for the aged, infirm, worn-out and unserviceable animals, which are quite unfit for

further work either due to old age or other causes. Animals admitted into the Pinjrapole were maintained till they died a natural death, the

pinjrapole was controlled and managed by the Society for the Prevention of Cruelty to Animals till 1949, in which year the pinjrapole was

separated from Society for the Prevention of Cruelty to Animals by the order of the High Court, the control and administration of the society was

vested in a committee of its own in which representation to the Society for the Prevention of Cruelty to Animals was given. In the year 1937, the

Government of Madras made a reference on the question of salvage of dry COWB from city dairies. The reference was considered at a meeting

of the Society for the Prevention of Cruelty to Animals held on 23 January, 1937. The reference related to the suggestion of the Government of

India regarding the salvage of dry cows. The following resolution was passed at the meeting:

Resolved that as the aims and objects of the Madras Pinjrapole require to be expanded to cover the protection of dry cows which are not

necessarily old and infirm, the Society for the Prevention of Cruelty to Animals be requested to call an extraordinary general body meeting for the

purpose of amending the aims and objects of the Institution accordingly, all though in actual practice the Institution has in the past given admissions

to and in maintaining healthy animals in Its premises.

4. The general body of the Society for the Prevention of Cruelty to Animals accordingly resolved as follows:

Resolved that the words " and dry cows which are not necessarily old and Infirm" be added to Para. 1 of the history and objects of the Madras

Pinjrapole after the words "horses, etc."

As a result of the amendment of the aims and objects of the Institution, the Madras Pinjrapole is to save as far as possible the lives of old and

Infirm cows, bullocks and horses, etc., and dry cows, which are not necessarily old and infirm from being slaughtered and from the hands of

hackney-carriage drivers as the case may be. The report of the Madras Pinjrapole of the year 1937 discloses that In pursuance of the amended

resolution the committee considered the question of starting a dairy schema in the Institution, for which purpose a subcommittee was appointed.

The society approached the Government and explained the requirements of the institution for a suitable grazing ground. The society also requested

the Director of Agriculture for free grant of a pair of stud-bulls to the pinjrapole. The report of the Madras Pinjrapole for the year 1938 discloses

that a beginning in the starting of the dairy scheme was made during the year by the construction of a separate shed in the inner compound for the

accommodation of bulls at a cost of Rs. 6,302-2-0 and an existing shed was

relaid on sanitary basis to keep their dairy cows. Mention is made of the request by the society for a suitable land for grazing purposes and for a free grant of a pair of stud-bulls. The report of the year 1939 discloses that the question of salvage of dry cows from city dairies was taken up and the activities of the pinjrapole extended to cover the protection of dry cows not necessarily old and Infirm. The question of starting a dairy farm was also taken up. The report states that milking cows were housed in a separate shed, the flooring of which was relaid on a sanitary basis, that on an average about fifty young cows were admitted every year, that as a result of the measures adopted by the Madras Pinjrapole the number of milking cows had increased with the corresponding improvement in the quality of milk supplied by the institution, that the income from the sale of milk had risen from Rs. 5,488-11-0 In 1938 to Rs. 7,438-1-9 in 1939.

A special depot for the sale of milk was opened In Mint Street, Madras. The committee also recorded its hope that the institution would become self-supporting and supply pure and healthy milk to the public. The committee repeated its request to the Government for a suitable land for grazing purposes. The report for the year 1910 refers to the dairy farm and records that the sale of milk In 1940 fetched Rs. 16 230-15-5 as against Rs. 7,438-1-9 in 1939 and expresses the hope that the institution would soon become self-supporting is 1941, the report discloses that the ambition of the committee was to make the Institution self-supporting instead of depending solely on the support of the Mahajan Committee. The committee also reported that they were able to secure three stud-bulls, one of Nellore type, one of Delhi breed and one of Sindhi breed. The committee trusted that with these and other stud-bulls already In the pinjrapole, Improvement In the general good breeding of animals could be effected. The report of the year 1943 discloses that the society had been supplying milk to leading hotels and restaurants, like the Modern Cafe, the Mysore Cafe and the institutions like the Madras Military Garrison Dairy Farm, the Madras Co-operative Milk Supply Union, the Madras Advocates Co-operative Society, the Buckingham and Carnatic Mills canteen and to a number of leading individuals. In the report of the year 1944 reference was made to the steady progress In its dairy scheme and the presentation of two good stud-bulls of Cngole and Sindhi breed to the institution by the

Government. The report recorded that the bulls were Immensely useful in the breeding of good cattle. Reference is also made to the activity of the

Madras Pinjrapole of salvage of dry cows by taking them during their non-lactation period and maintaining them till they calved again on a monthly

fee of Rs. 6 during the maintenance period. The reports of the years 1946, 1947 and 1948 disclose that 13 cows and 4 buffaloes were purchased.

In 1947, a sum of Rs. 8,203 was received by the society as feeding charges from the owners of young cows that were left with the society during

the non-lactation period. Covering fee of Rs. 1,200 was also realized and milk was sold for Rs. 10,000. The report of the Madras Pinjrapole for

the year 1949 gives a brief outline of the activities of the pinjrapole regarding maintenance of young cows during non-lactation period. The report

of the Madras Pinjrapole for the year 1950 also gives an account of its activities of salvaging dry cows and the dairy farm. The report of the

Madras Pinjrapole for the year 1957 (Golden Jubilee Report, 1957), discloses that the income from the sale of milk was about Rs. 60,000 and

that the Institution was flooded with young and useful animals. The receipt of stud-bulls to Improve the scientific breeding and the affording of

grazing facilities were also acknowledged. It is also admitted that up to the year 1957 the Madras Pinjrapole was buying milk from outside and

selling it. It is also clear from the records that the institution was admitting cows on monthly feeding charge basis and was also charging covering

fees, etc.

5. The reports of the Madras Pinjrapole from the year 1956 discloses that the object of the society was amended in 1937 to enable It to receive

young cows and maintain them during the non-milking months and charge fees from the owners. The idea of starting a dairy farm for the purpose of

making the institution self-supporting was also conceived and in pursuance of that idea stud-bulls were acquired for improving the cattle-breeding.

Milking cows were also purchased and provisions were made for the proper breeding of milking cows and stud-bulls. Representations were made

to the Government for allotting a grazing field and stud-bulls and the Government provided the Madras Pinjrapole with high-breed stud-bulls and a

grazing land for the cattle. The income from the sale of milk rose phenomenally reaching the figure of about Rs. 60,000 in the year 1957. It is

conceded by the learned Counsel for the respondent that In the year 1957 the Madras Pinjrapole gave up buying milk from outside and selling it. It

is submitted by the learned Counsel that the activities of the pinjrapole in receiving dry cows and maintaining the dairy farm by purchase of milking

cows and stud-bulls were continued and the society was deriving considerable income from the sale of milk. Sri M.R. Narayana-Swami, learned

Counsel appearing for the Madras Pinjrapole, submitted that, though the Madras Pinjrapole started maintaining cows and stud-bulls and was

selling milk, the main activity of the society was only to provide shelter for the old, decrepit and useless animals and, therefore, the society cannot

be called an industry. The activities of keeping cows and stud-bulls and doing milk business being only subsidiary In nature, it is submitted that

considering the main objectives of the society, the society could not be brought within the definition of ""industry"" In the Industrial Disputes Act.

6. The Industrial Disputes Act (14 of 1947) was enacted to make provision for investigation and settlement of industrial disputes and for certain

other purposes. Section 2(j) defines ""industry"" as follows;

"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.

The words in the definition are very wide In their Import. The second part of the definition is an inclusive one In its nature. The word ""undertaking

is also wide enough to Include any business, work or project in which any person engages himself. Section 2(s) defines ""workman"" as meaning any

person (including an apprentice) employed In any Industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or

reward, whether the terms of employment be express or implied. If the words used In the definition of the expression ""industrial dispute"" are given

their natural meaning, the Madras Pinjrapole, even If It had confined Itself to Its original objects of protecting the old, Infirm and decrepit animals,

would be an undertaking coming within the definition. Even the service rendered by a servant in a purely personal or domes-to matter or even In a

casual way will fall within the definition. But, In construing the definition of the ""industry,"" the Courts have drawn a line in a fair and just manner

excluding some callings, services and undertakings. Vide State of Bombay and

Ors. v. Hospital Mazdoor Sabha 1930 I L.L.J. 251 .

7. The leading cases in which the Supreme Court has drawn a line excluding some callings, services and undertakings from the definition of the

term "industrial dispute" are The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, (vide supra); The Corporation of the

City of Nagpur Vs. Its Employees, ; The National Union of Commercial Employees and Another Vs. M.R. Meher, Industrial Tribunal, Bombay

and Others, and University of Delhi and Another Vs. Ram Nath, , In The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and

Others, (vide supra), the Supreme Court, in considering the attributes the presence of which makes an activity undertaking within Section 2(j),

observed as follows at pp. 258-259;

....as a working principle It may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for

the rendering of material services to the community at large or a part of such community with the help of employees Is an undertaking. Such an

activity generally involves the co-operation of the employer and the employees; and Its object is the satisfaction of material human needs. It must

be organized or arranged In a manner in which trade or business is generally organized or arranged. It must not be casual, nor must It be for

oneself nor for pleasure. Thus, the manner in which the activity In question is organized or arranged, the condition of the co-operation between

employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the

features which are distinctive of activities to which 3, 2 (j) applies ...

In The Corporation of the City of Nagpur Vs. Its Employees, , Subba Rao, J. (as he then was), in discussing the question whether the various

departments of the Nagpur Corporation amounted to an industry summed up the position thus at p. 535:

....(1) The definition of " industry" In the Act Is very comprehensive. It is in two parts; one part defines it from the standpoint of the employer and

the other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the

Act.

(2) The history of industrial disputes and the law and Matlon recognizes the baalo

concept that the activity shall be an organized one and not that which pertains to private or personal employment.

(3) The regal functions described as primary and Inalienable functions of State though statutorily delegated to a corporation are necessarily

excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power.

(4) If a service rendered by an individual or a private parson would be an Industry, it would equally be an industry in the hands of a corporation.

(5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act.

(6) If a department of a municipality discharges many functions, some pertaining to Industry as defined In the Act and other non-Industrial

activities, the predominant functions of the department shall be the criterion for the purpose of the Act.

It would be relevant for the purposes of this case to note that If a department of a municipality discharges many functions, some pertaining to

Industry and Ors. to non-Industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act.

8. In The National Union of Commercial Employees and Another Vs. M.R. Meher, Industrial Tribunal, Bombay and Others, , the Supreme Court

had to consider whether a solicitor's firm carrying on the work of an attorney was an industry or not. The Supreme Court, after quoting the

working principle Laid down by the Supreme Court in The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, ,

proceeded to explain the statement in which the Court referred to the organization of undertaking Involving the co-operation of capital and labour

or the employer and his employees. It was explained that It could not be suggested that every form or aspect of human activity In which capital and

labour co-operate or employer and employee assist each other was an industry and that the distinguishing feature of an industry was that for the

production of goods or for the rendering of service, co-operation between capital and labour or between the employer and his employees must be

direct and must be essential. In the case of a hospital the Court was of the view that all categories of service rendered by respective classes of

employees in a hospital were essential for the purpose of giving service to the patients, which was the objective of the hospital, and that, therefore,

the hospital satisfied the test of co-operation between the employer and his employees. In the case of a solicitor's firm, the Court posing the

question whether a solicitor's firm satisfied the test answered It In the negative, as though there was, no doubt, a kind of cooperation between the

solicitor and his employees, that co-operation had BO direct or Immediate relation to the professional service which the solicitor rendered to his

client. The Court took the view that it was not easy to conceive that a liberal profession like that of an attorney could have been intended by the

legislature to "fall within the definition of ""industry,"" u/s 2(j). After quoting the observations made by Isaacs and Rich, JJ., In the Federated

Municipal and Site Council Employees⁹ Union of Australia v. Lord Mayor, Aldermen, Councillors and Citizens of the City of Melbourne and Ors.

(1918) 260. L.B. 608 , the Supreme Court held:

Co-operation to which the test refers must be co-operation between the employer and his employees which is essential for carrying out the

purpose of the enterprise and the service to be rendered by the enterprise should be the direct outcome of the combined efforts of the employer

and the employees.

9. In University of Delhi and Another Vs. Ram Nath, , the Supreme Court had to consider the question whether the work of imparting education

carried on by educational institutions was as industry or not. The Court held that the work union taken by an educational institution differed from

the normal concept of trade or business, that it would be inappropriate to describe education even as profession, that education In Its true aspect

was more a mission and a vocation rather than a profession or trade or business, however wide might be the denotation of the two latter words

under the Act. The Court, after extracting the working principle Laid down by the Supreme Court In The State of Bombay and Others Vs. The

Hospital Mazdoor Sabha and Others, , considered the question whether the work carried on by an educational Institution could be said to be

work carried on by it with the assistance of labour or co-operation of teachers. The Court, after considering the definition of ""workman"" u/s 2(s) of

the Act, held that the whole body of employees with whose Co-operative the

work of imparting education was carried on by educational Institutions did not fall within the purview of Section 2(s) and any disputes between them and the Institutions which employed them were outside the scope of the Act. Though the dispute related to the subordinate staff, the members of which might fall u/s 2(s), as the work of education was primarily and exclusively carried on with the assistance of labour and Co-operation of teachers, who were not workmen, the subordinate staff was only very few in number and the work of the educational institution was held to be not an industry. In coming to the conclusion that the organisation of the University of Delhi was not an Industry the Court took into account that the organization did not contribute capital of itself in carrying out its work of imparting higher education and that It received grants from the Central Government from the University Grants Commission and from charitable donors and charitable Institutions. Dealing with the decision of the Supreme Court in *The Corporation of the City of Nagpur Vs. Its Employees*, , the Court observed that the question whether education work carried on by educational institutions like the University of Delhi which had been formed primarily and solely for the purpose of imparting education amounted to an industry or not was not argued in that case, as the main attack on the award proceeded on the basis that what the corporation was doing through its several departments was work which could be regarded as regal or governmental, and as such, was outside the purview of the Act.

10. On behalf of the petitioner reliance was placed on the observations of the Supreme Court in *The National Union of Commercial Employees and Another Vs. M.R. Meher, Industrial Tribunal, Bombay and Others*, , that every form or aspect of human activity in which capital and labour cooperate or employer and employees assist each other could not be suggested to be an industry and that the distinguishing" feature of an Industry was that for the production of goods or for the rendering of service, cooperation between capital and labour or between the employer and his employees must be direct and must be essential. It was submitted that the activity of the Madras Pinjrapole was not between employer and employees and was not either direct or essential and was not directed for the production of goods or for the rendering of service to the human

activity. Relying on the observations of the Supreme Court in *University of Delhi v. Ram Nath* 1963 II L.L.J. 336 (vide supra), it was submitted

that the fact that the Madras Pinjrapole was not contributing any capital itself and receiving grants from charitable institutions should be taken into

account. It was further submitted that the activity involving the protection of old, infirm and decrepit animals cannot be said to be a human activity

which could be Included within the scope of the working principle Laid down in *The State of Bombay and Others Vs. The Hospital Mazdoor*

Sabha and Others, . Ramachandra Ayyar, J. (as he then was) dealing with the activities of the petitioner, the Madras Pinjrapole, took the view that

the activities of the Madras Pinjrapole had nothing to do with human needs and they were solely devoted to the needs of helpless animals. Vide

The Management of Madras Pinjarapole Vs. The Presiding Officer, Labour Court, Madras and Another, . According to the learned Judge, though

incidentally such activities might have a business tinge about them, it could not be said that they had for their object any human need or material

welfare, as the objects were mainly religious and humanitarian. A Bench of that Court In *Workmen employed in the Madras Pinjrapole Vs.*

Management of the Madras Pinjrapole and Another, , was unable to concur with the above observations of the learned Judge or to accept the

reasoning of the learned Judge. The Bench observed at pp. 477-478:

Services directed towards the satisfaction of needs, can only be related to articulate needs it laths human owners of these animals, impelled by

particular sentiments, to whom services are truly rendered by the Institution.

Regarding the religious and spiritual activities, the Bench thought that it could not be seriously contended that a temple or a church was an industry

because human wants were satisfied in such an Institution. Considering the question whether the Madras Pinjrapole could claim the application of

that principle, the Court held that It would depend on the extent to which It was essentially an Institution satisfying certain purely spiritual needs.

11. If the Madras Pinjrapole had confined Itself to the objectives at Its Inception, namely, to give protection to the old, Infirm and decrepit animals,

It could well be contended that It was only for the purpose of satisfying purely spiritual needs, as It Is common knowledge that Hindus consider

cow-protection as one of their religious duties. Such an activity could also be

brought within the scope of the decision In *University of Delhi v. Ram Nath* 1963 II L.L.J. 336 (vide supra) where It was held that the fact that the Institution did not contribute capital and that it received grants from charitable Institutions could be taken Into account. As Laid down in *The National Union of Commercial Employees and Another Vs. M.R. Meher*, Industrial Tribunal, Bombay and Others, , the activities of the Madras Pinjrapole can also be contended as not direct and essential in any aspect of human activity. If the Madras Pinjrapole had not extended its activities, following the authorities cited above, I would have had no hesitation in holding that It is not an industry. In this connexion, the decision of a Bench of this Court in *Pappammal Annachatram v. Labour Court, Madurai* 1984 I L.L.J. 493 may be referred to. The question that arose for consideration in that case was whether the activities from the income of an endowment for providing free food to pilgrims and for providing a chatram for such purposes, which income was subsequently used for providing free boarding and lodging to poor students reading in schools, colleges or other educational institutions, would be an industry. The Court held that the charity was made for the purpose of attaining spiritual benefit, and In such acts of donation greater stress was Laid on the religious merit which the gift conferred on the donor, than on the aspect of the material wants of the donee. If subsequently helping the poor and deserving students became the principal activity, that could be regarded as an "activity subserving the cause of education and would fall within the principle Laid down In the decision of *University of Delhi v. Ram Nath* 1963 II L.L.J. 336 (vide supra; and that activity would not be an Industry.

12. A reading of the annual reports of the Madras Pinjrapole shows that the object of the Pinjrapole was amended to include protection of dry cows for preserving the cattle wealth of the country. The activities of the Madras Pinjrapole were extended to Include the keeping of milk cows and high-pedigree stud-bulls for the purpose of rearing cattle of Quality and making the institution self-sufficient. It cannot be disputed that the Madras Pinjrapole was receiving young dry cows and keeping them during the non-lactation period charging the owners fees for the services rendered. The annual reports show that a large number of high milk-yielding cows and buffaloes were purchased by the society and due to the

successful working of the dairy farm the Pinjrapole was able to supply milk to various Institutions. The Madras Pinjrapole addressed the

Government for the grant of a grazing land and for stud-bulls for the purpose of Improving the quality of cattle and for running the dairy farm

efficiently. The reports show that considerable profits were made by the Madras Pinjrapole, the sale of milk fetching a sum of Rs. 60,000 in the

year 1957. The above activities will bring the institution within the scope of industry.

13. It was submitted by the learned Counsel for the petitioner that the labour court failed to take note of the observations of the Bench in

Workmen employed in the Madras Pinjrapole Vs. Management of the Madras Pinjrapole and Another, that individual unity of the organization

(like a distinct dairy farm) might constitute an industry, though the society itself might not be one. Learned Counsel for the petitioner contended that

the labour court ought to have taken separately the dairy farm and the keeping of decrepit animals and determined whether either or both of them

were Industries. If the petitioner had kept the two activities separately, it would have been possible to hold that the activity relating to the

maintenance of decrepit animals, would not be an industry and that the activity of keeping the dairy farm would be an Industry, But it is clear from

the way in which the Madras Pinjrapole runs its activities, that two separate units are not maintained. The object of the Madras Pinjrapole after

1937 was to make it a self-supporting unit and for that purpose, it Included the dairy farm activity. It cannot be said that the dairy farm was only

subordinate In character and that the main activity was that of keeping the decrepit animals. Considering the entire business of the society as a

whole it has to be held that at the time when the dispute was referred to the labour court the petitioner was an industry. Sri Narayanaswami learned

Counsel for the petitioner, submitted that the Madras Pinjrapole had suspended most of its activities and Is confining itself to taking care of

decrepit animals subsequent to the filing of the petition. How much of the activities the Madras Pinjrapole had given up and when, can only be

decided on evidence by the labour court. It is for the petitioner to prove that subsequent to the date of reference it carried on only activities which

would not amount to an Industry.

14. In the result, the petition is dismissed and the labour court is directed to determine the other Issue. There will be no order as to costs.