
(1988) 01 MP CK 0023
In the Madhya Pradesh High Court
Case No : M.P. No. 498 of 1988

Mahila Samiti

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 21-01-1988

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 33(2)

Citation : (1989) ILR (MP) 696 : (1988) JLJ 379 : (1993) 3 LLJ 468 : (1988) MPJR 89 : (1988) MPLJ 146

Hon'ble Judges : S. Awasthy, J; B.C. Varma, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; Rajendra Tiwari, Dy. Govt. A.G. for R-1 and R-2 and R.K. Gupta, for R-4, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Varma, J.

The order in this petition shall also govern the disposal of Miscellaneous Petitions Nos. 500 and 509 both of 1982.

A common question in all these three petitions for decision is whether the petitioner establishment engaged in furtherance of popularly known Family Planning Scheme is an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act ?

The petitioner in all the three petitions is a society constituted under the provisions of the Madhya Pradesh Societies Registration Act, 1960 (Act No. 21 of 1960). Its object is to advance social, economic, educational and cultural standard of women and its field of operations is Tikamgarh district. It also endeavoured to assist the State Government in advancement of the Family Planning Programme. For this purpose the respondents Smt. Beni Bai (in M.P. No. 498 of 1982) was engaged as Health Assistant, Smt. Sharikunnisa (in M.P. No. 498 of 1982) as Village Worker and Smt. Margarate Masih (in M.P. No. 509 of

1982) as an Aya. The society terminated their services. All the aforesaid three employees approached the Labour Court by a petition u/s 33C(2) of the Industrial Disputes Act, 1947 laying a claim for certain amount as difference of salary. Their assertion had been that they were paid less by the employer, namely, the petitioner, during the period they served it and were in its employment. Those applications were proceeded ex parte and have been allowed by the impugned orders directing the petitioner to pay certain amounts to the respondents-employees.

At the hearing, Shri Y.S. Dharmadhikari, counsel for the petitioner, raised an objection as to the maintainability of those applications and also questioned the jurisdiction of the Industrial Court to entertain and decide them on the ground that the petitioner's establishment was not an "industry" and that those employees were not "workmen". Learned counsel submitted that under the circumstances of the case, the petitioner cannot be held to be an "industry". The terms "industry" and "workman" are defined in Section 2 (j) and (s) respectively of the Industrial Disputes Act as follows:

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

(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment had led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer of other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity," draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature"".

Evidently, this term "industry" in its application to various establishments became the subject matter of considerable debate at the Bar. The question as to what is "industry" has continuously baffled and perplexed the Courts. It has defined analysis, so that judicial effort has been ultimately reduced merely to evolving tests by reference to characteristics, regarded as essential for

constituting an activity as an "industry". Divergent views were expressed by the Judges at different occasions. Speaking for himself and on behalf of Bhagwati and Desai, JJ. Krishan Iyer, J. in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, observed :

"A definition is ordinarily the crystallisation of a legal concept promoting precision and rounding off blurred edges but, alas, the definition in Section 2(j), viewed in retrospect, has achieved the opposite".

However, the definition of this term "industry" which is now accepted in its scope and application is the one as explained in this *Bangalore Water Supply* case (supra) which has approved earlier decision in *D.N. Banerji v. P.R. Mukherjee* 1953 I LLJ 195. It has been said to have a very wide import. It is exhaustive and also inclusive and comprehensive in scope. This is how the term has been explained in that decision :

"(a) Where (i) systematic activity, (ii) organised by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale *prasad* or food) *prima facie*, there is an industry in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy emitting the undertaking.

Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself"

It has been further held that all organized activity possessing the above triple elements, 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, calling and services, adventures "analogous to the carrying on of trade or business". Explaining the aforesaid guidelines further the Supreme Court laid down the following "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 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*, (1960) 1 LLJ 523 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".

The Seven Judges Bench in Bangalore Water Supply case (supra) overruled the earlier decisions in *The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi*, ; *The National Union of Commercial Employees and Another Vs. M.R. Meher*, *Industrial Tribunal, Bombay and Others*, : *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, ; *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, ; *The Dhanrajgirji Hospital Vs. The Workmen*, and other rulings whose ratio runs counter to the principles enunciated in that case. The view taken in *Muller and Phipps (India) Ltd. Vs. K.C. Sud*, has been rehabilitated.

Still one does not have a working formula as to what activity is an "industry" and what is not. The Judges in Bangalore Water Supply case (supra), despite their efforts to find a working formula "have cried in frustration for legislative reforms". Given activity has to be examined in the lights of its functions and within the guidelines laid down in Bangalore Water Supply case (supra) to find out if that activity is an industry. The manner in which the activity in question is organised or arranged, the condition of co-operation between the employer and the employee necessary for its success and objects to render the material service to the community were finally held to be the test to judge whether the activity is "industry". Regarding the activity of running of a hospital which is a welfare activity and not a sovereign function, it was observed that hospital facilities, research products and training services are "service" and hence "industry" and absence of profit or functions of training and research would not take the institution out of the scope of "industry".

As stated earlier, the object of the petitioner society is to advance social, economic, educational and cultural standard of women in Tikamgarh district. It also undertook to further the social welfare schemes and family planning programme of the State Government and the State Government in turn would make some grant of funds to the petitioner. To carry out the family planning programme as sponsored by the State Government, the petitioner engaged the services of respondents Benibai, Smt. Sharikunisa and Smt. Margarate Masih. Apparently under this family planning programme the petitioner was providing hospital facilities. The appointments of the respondents as Health Assistant and Ay a do give an indication that hospital facilities were provided by the petitioner. Services akin to those as are rendered in the hospital were carried on by the petitioner society. It was held in *Gulab Singh Chauhan v. State of M.P.* 1983 M.P.L.J. 815, by the learned Single Judge (K.N. Shukla, J.) that the activities of Family Health Centre under the Public Health and Family Planning Department of the State Government are such which are carried on by an organisation having employers and employees, with its objective of promoting material services to the community. We approve this view taken by the learned Single Judge. The activities of the petitioner society, as set forth above, while promoting the family

planning programme of the State Government do provide material services to the community. Apart from this, as stated in the return filed by the employees, the petitioner society undertakes and is systematically engaged in carrying on the job of training the women for knitting and embroidering the cloth and the material so obtained is sold in market. The petitioner society also manufactures chalk to be sold in market and also in the schools. Tat pattis are also manufactured and sold by it. It also runs schools and charge fee from children it also manufactures Papad, Badi and Masalas to be sold in the market. All these averments made on affidavit have not been denied by the petitioner by filing any counter affidavit. The petitioner is thus engaged in systematic activities of promoting health and training women in family planning programme and also other commercial activities and is an organisation having employers and employees. These services so rendered to the community by the petitioner society make it "industry" within the meaning of Section 2(j) of the Industrial Disputes Act. The respondents employees who were employed by the petitioner society to render such services for reward must be held as "workmen" and defined in Section 2(s) of the Act.

We, therefore, do not agree with and overrule the contention on behalf of the petitioner's counsel that the petitioner is not an "industry" and, therefore, the respondent No. 3 had no jurisdiction to entertain the applications filed by the employees u/s 33C(2) of the Industrial Disputes Act.

Before parting we may observe that the petitioner did not contest the applications before the Labour Court and remained ex parte. The plea now raised was, therefore, not advanced before the Labour Court. Even so we heard the counsel for the petitioner on this plea with a view to completely adjudicate between the parties and to avoid any remand entailing further delay in adjudging the cause of the employees.

No other point was urged. The petitions fail and are dismissed. The petitioner shall bear the cost of respondent No. 4 in each case. The other respondents shall bear their own costs. Counsel's fee Rs. 100, if certified. The balance of security amount be refunded to the petitioner.