(1960) 02 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 41 of 1961

Municipal Committee, Raikot APPELLANT

Vs

Ram Lal Jain and others RESPONDENT

Date of Decision : 12-02-1960

Acts Referred:
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10(1)(c), 2, 2(s)
Punjab Municipal Act, 1911 — Section 61(2)

Citation : (1960) 02 P&H CK 0003

Hon'ble Judges : H.R. Khanna, J;A.N. Grover, J

Bench : Division Bench

Advocate : A.S. Sarhadi, for the Appellant; Anand Swarup for Respondent No. 1 and A.M. Suri for the Advocate-General, for the Respondent

Judgement

A.N. Grover, J.—This is an appeal under clause 10 of the Letters Patent against a judgment of a learned Single judge dismissing a petition filed by the present appellant under Articles 226 and 227 of the Constitution by which the legality and validity of an award made by the Labour Court, Jullundur, in respect of Ram Lal, who was employed as a peon in the Octroi Department of the appellant, had been challenged.

2. The sole question, which came up for consideration before the learned Single Judge and which has been argued before us, is whether Ram Lal who was an octroi peon and was only collecting octroi duty could be regarded to be a work man within the meaning of S. 2(s) of the Industrial Disputes Act, 1947 (hereinafter to be called the Act) and whether the reference which was made under S. 10(1)(c) of the Act in respect of him could have been validly made. The learned Single Judge followed a decision of the Supreme Court in The Corporation of the City of Nagpur Vs. Its Employees, and held that Ram Lal was a workman in an industry and his dispute had rightly been referred to the Labour Court for adjudication.

3. The learned counsel for the appellant contends that the learned Single Judge did not fully and properly appreciate the observations contained in the decision mentioned above and that the Octroi Department of the Municipality, Raikot could not be considered to be engaged in any such activity which can be called an industry within the meaning of clause (j) of S. 2 of the Act.

Prior to the decision in the case of The Corporation of the City of Nagpur Vs. Its Employees, their Lordships had an occasion to consider the matter in D.N. Banerji Vs. P.R. Mukherjee and Others, where the Head Clerk and a Sanitary Inspector in the employ of the Budge Budge Municipality had been dismissed and a reference had been made by the State of West Bengal to the Industrial Tribunal for adjudication of the disputes between them and the Municipality. The Tribunal made an award directing their reinstatement. The Municipality approached the High Court by means of a petition under Articles 226 and 227 for quashing the award but the petition was dismissed. When the matter came before the Supreme Court, the nature of the activities of a Municipality was examined. It was pointed out that in specifying the purpose to which the Municipal fund was applicable, S. 108 of the Bengal Municipal Act enumerated under 36 separate heads several things such as the construction and maintenance of streets, lighting, water supply, conservancy, maintenance of dairy farms and milk depot, the taking of markets on lease etc According to their Lordships, some of these functions may appertain to and partake of the nature of an industry while others may not. The following observations at page 62 are noteworthy for the purpose of this case:

The levy of taxes for the maintenance of the services of sanitation and conservancy or the supply of light and water is a method adopted and devised to make up for the absence of capital. The undertaking or the service will still remain within the ambit of what we understand by an industry though it is carried on with the aid of taxation, and no immediate material gain by way of profit is envisaged.

The appeal against the judgment of the Calcutta Court was dismissed.

In The Corporation of the City of Nagpur Vs. Its Employees, he question was whether and to what extent the activities of the Corporation of the City of Nagpur came under the definition of ''industry'' in S. 2(14) of the Central Provinces and Berar Industrial Disputes settlement Act, 1947. Subba Rao, J., I who delivered the judgment of the Court examines the whole position at length and one of the main conclusions contained in the summary at p. 535 (of Lab LJ) : (at p 684 of AIR) is that the regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the (sic) of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power.

A list of various departments of the Nagpur City Corporation has been set out at pages 535-536 of Lab LJ) : (at p.684 of AIR) out of which items 2 and 3 relate to the Octroi Department. The scheme of the City of Nagpur Corporation Act has been examined, out of which reference may be made in particular to S. 57 Under that section the Corporation has to make adequate provision by any means of measures which it may lawfully use or take, such as for lighting public streets, cleaning of public streets, disposal of nightsoil and rubbish maintenance of fire brigade and other welfare activities in the interest of the public. Part IV of that Act empowers the Municipality to impose taxes for the purposes of that Act and also describes the procedure for collecting the same. Part V confers powers and imposes duties on the Corporation and its officers in respect of public health, safety and convenience After setting out the background Subba Rao J. has dealt with the position of each department of the Corporation As regards the Tax Department, the following observations are pertinent.

The main functions of this department are the imposition and collection of conservancy, water and property taxes. No separate staff has been employed for the assessment and levy of property taxes the same staff does the work connected with assessment and collection of water-rates as well as scavenging taxes It is not disputed that the work of assessment and levy of water-rate and scavenging rate for private latrines is tar heavier than the other works entrusted to this department. No attempt has been made to allocate specific proportion of the staff for different functions. We, therefore must accept the finding of the State industrial court that the (sic) of this department doing clerical of manual work predominantly does the work connected with scavenging taxes and water rate. The said rates are really intended as fees for the service rendered. The services, namely scavenging and supply of water can equally be undertaken by a private firm of an individual for remuneration and the fact that the municipality does the same duty does not make it any the less a service coming under the definition of ''industry''. We would, however, prefer to sustain the finding on broader basis There cannot be a distinction between property tax and other taxes collected by the municipality for the purpose of designating the Tax department as an industry or otherwise. The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of ''industry'' it would be illogical to exclude the Tax department from the definition While in the case of private individuals or firms services are paid in cash of otherwise in the case of public institutions as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services tendered by the municipality come under the definition of Industry we should hold that the employees of the Tax department are also entitled to Hr benefits undo the Act.

Mr Ajit Singh Sarhadi for the appellant has sought to base his argument mainly on the tact that in The Corporation of the City of Nagpur Vs. Its Employees, no separate staff had been employed for the assessment and levy of property tax and the same staff did the work connected with assessment and collection of the water rates as well as scavenging taxes. He submits that in the present case there is a clear distinction because the staff of the Octroi Department of the Municipal Committee. Raikot, does not do the work connected with assessment and collection of water rates as well as scavenging taxes. He says that the principal consideration which prevailed with the Supreme Court was that the services, namely, scavenging and supply of water can equally be undertaken by a private firm or an individual for remuneration and, therefore, when the Municipality did the same duty that service fell under the definition of "industry".

According to Mr. Sarhadi, the work of the Octroi Department in the present case is one of collection of octroi duty only which would be more in the nature of exercise of a regal function. It cannot however, be forgotten that according to the decision of the Supreme Court, regal functions cannot be said to include the function of collection of tax and octroi duty, as has already been mentioned before. As regards the distinction which has been sought to have been made by Mr. Sarhadi, (sic) is a complete answer contained in the second part of the observations which have been extracted at length. Their Lordships did not choose to sustain the finding with regard to the Tax Department on the first part of the reasoning but preferred to sustain it on a broader basis. According to that basis, if a Municipality or a Municipal Corporation has to collect taxes and tees to enable it to discharge its statutory functions which are wholly or predominantly covered by the definition at "industry" it would not be logical to exclude the Tax Department from that definition. It may be mentioned that this view was perfectly in consonance with what had been laid down fn the earlier decision in D.N. Banerji Vs. P.R. Mukherjee and Others,

4. How, it is clear from Annexure ''B'' that the octroi realised by the Municipality of Raikot is credited to its general revenue. It is not denied that octroi is terminal tax levied on certain goods or articles entering the limits of the Municipality which is imposed under S. 61(2) of the Punjab Municipal Act, 1911. The provisions of the aforesaid Act show that the Municipality has to discharge several such functions as were being discharged by the Corporation of the City of Nagpur or by the Budge Budge Municipality. Chapter VII contains provisions, for establishment and maintenance of fire-brigade, Chapter VIII for, water supply, Chapter IX, for sanitary, burial and burning places, dangerous animals, drains and privies, scavenging and slaughter places etc. It is not disputed that the expenses of all these services and functions have to be met from the general funds of the Committee. It would follow that the Octroi duty or terminal tax together with other taxes enables the Municipality to discharge its statutory functions which are predominantly covered by the definition of "industry" In this view of the matter the learned Single Judge rightly applied the rule laid down by their Lordships in the The Corporation of the City of Nagpur Vs. Its Employees, and came to the correct conclusion that Ram Lal was a workman in an industry and since his cause had been sponsored by the Municipal Subordinate Services Federation, his dispute bad been rightly referred to the Labour Court for adjudication.

5. Mr. Sarhadi has sought to press into service a judgment of a Division Bench of this Court In The Cantonment Board, Ambala Cantt. Vs. State of Punjab and Others,). One of the questions raised in that case was whether a record-keeper of a Cantonment Board was a workman within the meaning of the Act. The facts of that case were somewhat different and, at any rate, it appears that the attention of the Bench was not invited to the decision of their Lordships in Corporation of the City of The Corporation of the City of Nagpur Vs. Its Employees, by which the present matter must be regarded as fully covered.

6. In the result, the appeal tails and it is dismissed, but in the circumstances there will be no order as to costs.

H.R. Khanna, J.

7. I agree.