

(2003) 09 CAL CK 0067

In the Calcutta High Court

Case No : Writ Petition No. 16959 (W) of 2002

Nathji Bhandar and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 22-09-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(j)

Citation : 108 CWN 8

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Saptangsh Basu, Sandip Kr. Dutta, Balai Chand Pal and Nilendu Bhattacharya, for the Appellant; Amal Baran Chatterjee and Abdul Hadi, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, J.—This writ petition is verbally made for the purpose of setting aside the award passed by the learned Judge, 8th Industrial Tribunal, West Bengal dated 7th August, 2002. The order of reference is dated 24th May, 2002. Issues are as follows :

- (1) Whether the demand for increase in salary of workmen is justified ?
- (2) To what relief, if any, are the workmen entitled to?

Sri Nathji Bhandar of 27, Sri Hariram Goenka Street. Calcutta 700 007 represented by its constituted Attorney, the petitioner no. 2 herein, is hereafter called as the management". Leaving aside the State and the Tribunal. Sri Nathji Bhandar Employees" Union of 12A, Ramesh Dutta Street, Calcutta-700 005 appears to be the real contesting respondent hereinafter called as "representative of the workmen".

The area of the dispute is as follows :

- (a) Sri Nathji Bhandar is not an industry u/s 2(j) of the Industrial Disputes Act.

(b) The employees are not entitled to any relief because they are not salaried persons;

(c) There is no locus standi of the Union to represent the case of the employees before the Tribunal;

According to the petitioner, all the aforesaid points were agitated before the Tribunal. The writ petition was heard on different dates. Although the petitioners banged upon the first point at the threshold but thereafter they put thrust upon the third point. In any event all the three points are important for the Court. Therefore, the discussions are made in respect of all the three points categorically. Firstly, it is to be remembered that this is not an Court of Appeal arising out of final fact finding Court i.e. the Tribunal. Therefore, the interference of the Writ Court is restricted only to the question of perversity in passing of such award and/or on any apparent mistake. From the award I find that Sri Nathji Bhandar is a branch of an organization known as Nathdwara Temple Board, situated at Nathdwara," District Udaipur, Rajasthan. The organization consists of a number of temples, dharmasalas, charitable institutions, hospitals, gardens, jungles, mountains, gosalas, grounds and immovable and movable properties including gold and silver utensils, jewelleries all over India. The whole organization is covered and controlled in accordance with an Act called as Nathdwara Temple Act, 1959 and the Rules framed therein called as Nathdwara Temple Rules, 1973. The whole organization is managed by a Board of Trustees firm all over India having one permanent president (Tilkayat) and one Chief Executive Officer appointed by the Government of Rajasthan and/or in his absence the controller of Udaipur District. All the employees of the Temple, other than Chief Executive Officer and Seawallas, are officers and servants. The officers and servants of the Board are classified in two categories i.e. (i) Salaried employees and (2) Non-salaried employees. Salaried employees are officers, assistants, clerks, guards, gowalas, durwans who are getting grades, salaries and leaves, P.F. and other benefits in accordance with grades, salaries and leaves. P.F. and other benefits of Government employees of Rajasthan and they are kept under Chief Executive Officer and are also responsible to the Board of Trustees. Non-salaried employees an Mukhias. Bhitariyas and Seawallas who are not getting salary and depend on prasads and are under Tilkayat as declared by the second proviso to Section 21 of the said Act and they are also getting free residence, clothing, boarding, lodging and certain monetary remunerations keeping in view their status as decided by Tilkayat, the President of the Board. In Sri Nathji Bhandar. Calcutta all the employees are getting salaries and some other benefits of non-salaried employees as per usages and customs of the Board. They have never been declared as Seawallas either by Goswami i.e. Tilkayat (President of the Board) or approved by the State Government of Rajasthan as second proviso to Section 21 of the Act. Therefore, in Sri Nathji Bhandar, Calcutta there is a third category of employees. However, they are responsible to the Chief Executive Officer as to the appointments, transfers, dismissals and payments etc.. It has done hereunder by his supervisory or by the

representatives silting in Calcutta. Hence the employees are salaried employees but they are not getting the entire benefits of salaried employees in a most arbitrary manner by way of violation of the principles of natural justice, equity and fair play. The monthly collection of Sri Nathji Bhandar is more than lakh of rupees which is being transferred illegally and motivatedly to Nathdwara without depositing in banks at Calcutta by violation of the aforesaid Act and Rules. At this stage, sums were transferred from Calcutta to Nathdwara without permission of State and in violation of Section 17 of the Act. The exemption of the income tax is available as regards Nathdwara Temple but not available to Sri Nathji Bhandar. On 10th October, 1990 a Memorandum of Settlement was arrived by or between the Management and the Union and as per such terms the Management increased salary of the employees to the extent of 30% with retrospective effect from 1st October, 1989. After expiry of the period under such Memorandum of Settlement, a fresh Charter of Demands was placed before the Management and the Labour Commissioner, Government of West Bengal in July, 1997 which contains fixation of salary and working hours including grades, dearness allowance, medicals, households, leaves, pensions, provident funds etc. The Assistant Labour Commissioner initially suggested to enhance salary by 35% besides framing scope of payment of the employees in the same line as enforced in Nathdwara and asked the Management to send competent representative for immediate settlement but the Management failed or neglected to respond. Finally on 8th May, 1991 the Assistant Labour Commissioner suggested the Management to pay 40% enhancement of wages with effect from November, 1997 as full and final settlement of the Charter of Demands. The present Manager confessed and agreed before the Assistant Labour Commissioner to hold bipartite negotiation within the framework of the Act but refrained from doing so for the three years. Due to negligence on the part of the Management conciliation failed. Thereby the Labour Department referred the dispute to the Tribunal for adjudication.

2. On the other hand, the Management contended that Sri Nathji Bhandar is an endowment of temple of Shree Shree Nathji at Nathdwara. The Temple Board is a statutory Board nominated by the State of Rajasthan as per Section 5 of the Act with an object to provide better administration and governance of the Temple. Section 16 read with Rule 19 and 20 provide powers and duties of the Board. All the offerings are being received for daily worship of the Deity. Gosala, being part and parcel herein made for worshipping of Lord Krishna. Section 21 of the Act provides detailed list of Sevawallas which includes Mukhiya, Bhitariya, Rasoia, Balbhogiya, Samadhali, Doodhgharia, Jalghari Kirianiya, Khsha Bhandari and Pakhavaji. Sevawallas are given token money instead of prasad. It is not admitted position that non-salaried staffs are given accommodation. The alleged agreement was signed by the person not empowered to do the same. The Temple en 10% every year and the same are accepted by the Sevavallas. The persons who were directed to participate in the conciliation proceedings empowered to hold any bipartite negotiation The Tribunal has diction to entertain the case.

3. Against this background, the Tribunal held that the Management Nathji Bhandar is not a temple but an Industry u/s industrial Disputes Act, 1947. By way of amendment of such definition with effect from 21st August, 1984 meaning of "Industry" has been given as follow:

Industry means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature)...."

4. Therefore, the whole gamut of consideration is whether the nature of the work of Management is merely spiritual or religious or otherwise. As per Section 2(viii) of the Nathdwara Temple Act, 1959 "temple" means the Temple of Shri Shrinathji at Nathdwara in Udaipur District and includes the Temple of Shri Navnit Priyaji and Shri Madan Mohanlalji together with all additions thereto or all alternations thereof which may be made from time to time after the commencement of this Act. As per Section 2 (i) Board means the Nathdwara Temple Board established and constituted under this Act. As per 21 of the Act the Board may appoint, suspend, remove, dismiss or reduce in rank or in any way punish all officers and servants of the Board other than the Chief Executive Officer in accordance with Rules made by the State Government. Rule 2(1)(f) says "Seva" includes all kinds of service performed in respect of the idols the Temple or other objects of worship installed therein. As per Rule 22 the Board or the Executive Committee or any adhoc committees or its officers and servants shall not deal with any matter touching the spiritual or non-secular affairs of the temple i.e. matters connected with the conduct of Seva and Puja and other ceremonies and festivals of temple or relating to the appointment, dismissal etc. of the Mukhiyas Bhitariyas and other Sevawallas. Therefore, it can safely be construed on the basis of the plain reading of the aforesaid parts of the Act and Rules that the entire work in connection with Nathdwara Temple is not religious and charitable. Affairs of the Temple and affairs not in connection with the Temple are separated by the Act and Rules themselves. The name of Sri Nathji Bhandar petitioner no. 1 herein, is admittedly not given under the definition of "temple" u/s 2(viii) of the aforesaid Act, 1959. Hence, neither the petitioner no. 1 is temple nor the works of the organizations of Nathdwara is exclusively spiritual and religious.

5. Mr. Sapthangsu Basu, Learned Counsel, appearing on behalf of the petitioners cited a Constitution Bench judgment of the Supreme Court reported in Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others, to establish that Nathdwara Temple is a temple.

6. I am not for a moment saying that Nathdwara Temple is not a temple so far as the Hindu Law is concerned which was the subject matter before the Constitution Bench. The dispute arose before the Constitution Bench as to whether the Nathdwara Temple is a private temple or a public temple. Supreme Court held

that it is a public temple. There is no dispute so far as such part is concerned. This is also clear from being the definition Clause of the Act. But by such establishment characteristic of the master servant relationship guided by the industrial Disputes Act cannot be ignored when the particular Act and Rules provided nature of spiritual, religious activities and nature of non-spiritual and non-religious activities.

7. According to me, by virtue of Hindu Law if one temple is declared as public temple by the Court it will not take away the right of the livelihood of a person attached to such temple. Moreover. Section 2(i) is very particular in this respect. It does not speak for a moment that as because one establishment by virtue of definition declared as temple ipso facto it will take away right of the workmen attached to it. The meaning of the temple is not relevant for the purpose of the Industrial Disputes Act. 1947. The meaning of the nature of the works attached to such temple is relevant for the purpose of due consideration. At the time of hearing of the matter by the Learned Judge of any Industrial Tribunal or Labour Court it is open to consider whether any workman whose grievance is to be adjudicated attached merely with the spiritual or religious activities of such temple or not. If such service is not attached to the spiritual or religious activities the right of such other persons cannot be ignored from due consideration by the Court or Tribunal as an industrial dispute. The meaning of industry is very clear to the extent. It says about the systematic activities by co-operation between the employer and workmen which is available in a temple. It relates to production, supply or distribution of goods or services with a view to satisfying human wants or wishes meaning thereby the scope of such work is limited to the aforesaid extent. Only the wants and wishes which are merely spiritual or religious is eliminated. Therefore, if one is attached directly to the idol for the purpose of conduct of religious rites as produced or working as mediator between a God and worshippers and the people directly concerned with such persons cannot be said to be the workmen but not other persons who are not directly involved. in such type of activities unless and until excluded by any operation of law. In the present case, the specific Act and Rules do not say that Sri Nathji Bhandar of Calcutta is a temple as per Section 2(viii) of the Act. The persons concerned are not directly involved with such type of religious and spiritual activities of the idol situate at Sri Nathji Temple at Nathdwara District, Udaipur, Rajasthan. Hence, my considered view is that Sri Nathji Bhandar, Calcutta cannot be held to be a temple for the sake of Industrial Disputes Act. 1947. Therefore, as a consequential effect the meaning of industry as Section (j) or the Industrial Disputes Act. 1947 squarely applies in this case.

8. Mr. Bose cited a Supreme Court judgment reported in 2002(1) CLR 869 (Shri Gajanan Maharaj Sanalhan vs. Shri Gajanan Karamchari Sangh & Anr.) in which reliance has been placed on the ratio of a judgement reported in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, and contended that Sri Nathji Bhamdar of Calcutta is a temple on the basis of the ratio of such judgment.

9. According to me, such ratio of the judgement is distinguishable in view of the factual position herein. In such judgement, Supreme Court was called upon to consider whether the establishment is "temple" or an industry. The Supreme Court held that pre-dominant character of the establishment and the nature of relations resulting in the production of goods and services will govern the field. In the present case, the Act itself prescribed which temples are principally declared as temples under the Act. Rule specified who will be declared to be attached to religious and spiritual activities and who are not. In such circumstances, predominant part in specified Act and Rules which govern the field.

10. So far as the second point is concerned Learned Counsel appearing for the petitioners contended that the workmen are not entitled to any relief because they are not salaried persons. According to me, the Tribunal has come to an appropriate conclusion in respect of the factual aspects of the matter so far as such point is concerned. It may be good, bad or indifferent but it will derive from the facts. Therefore, when the Tribunal being the final fact-finding authority, arrived at a factual conclusion Writ Court should not interfere with the same. Learned Judge of the Tribunal proceeded on the basis of the various oral and documentary evidences and ultimately came to a conclusion that there should be an increment of the salary of the workmen at the rate of 10% of their salary with effect from January, 1995. In coming to such conclusion all aspects of the matter including the conciliation and suggestion given by the Assistant Labour Commissioner were taken note of by the Learned Judge, 8th Industrial Tribunal. Although it was tried to establish that the legitimacy of the claim of increment of salary is sine qua non but according to me, the same is not indispensable when the Sri Nathji Bhandar is established as an industry and the Tribunal came to a conclusion not only on the basis of the question of facts available in between the parties but also on the conciliation proceeding and recommendation by the Assistant Labour Commissioner. That apart Tribunal cannot proceed beyond the scope and ambit of the order of reference. Order of reference clearly specifies about the demand for increase in salary of the workmen. Therefore, there is no scope for the Tribunal to go beyond the reference and adjudicate how the reference was arrived at. Either the Tribunal accepts the reference or rejects it. So far as the rejection part is concerned, there should be a specific case in this respect before the Tribunal and if no such case is there the Tribunal would be bound by the order of reference. When the order of reference is made for the purpose of increment of salary of the workmen then there is no scope of the Tribunal to adjudicate that workmen are not entitled for the salary. Unless and until it is established before the authority that the workmen are salaried no question of reference of increment of salary arises as alleged or at all.

11. So far as the last point being locus standi of the Union is concerned, the Tribunal already held that the Union issued one notice to the members of the Union for an extended general meeting in the temple premises on 31st December, 2000. Copy of the Minute Book, charter of demands and

management's attitude, selection and approval of the documents, approval to the reply will be presented to the Labour Court. Members of the union in a resolution took unanimous decision which is reflected from the exhibit. From the Exhibit 4 it appears that the temple authority accepted the Secretary of the union to be representative of the workmen. Exhibit 1 shows that the Settlement took place in between the present workmen and the concerned Temple authorities. Exhibit 6 goes to show that Assistant Labour Commissioner and Controlling Authority, West Bangal under the Payment of Gratuity Act. 1972 has decided that payment of gratuity will be made to one of the ex-employees. Exhibit. 11 is also a Memorandum of Settlement held in between Union and Management of the Temple. Considering such oral and documentary evidences the Tribunal held that the Union had authority to espouse the cause of the workmen attached to the Temple.

12. Mr. Bose referred to paragraph 7 of such judgement reported in 1975 Lab.I.C. 1153 (Deepak Industries Ltd. & Anr. vs. State of West Bengal & Ors.) whereunder I find a Division Bench of this Court itself held that when the authority of the Union is challenged by the employer it must be proved by production of material evidence before the Tribunal to which such a dispute has been referred that the Union has been duly authorized either by way of resolution of its members or otherwise that it has the authority to represent the workman whose cause it is espousing. Mere fact that the said Union is registered under the Trade Unions Act is not conclusive proof of its real existence or the authority to represent the workmen in the reference before the Tribunal. Mere negotiations by some official of the Union with the employer conciliation or executing certain documents on behalf of the workmen prior to the reference are not conclusive proofs of the authority of the Union to represent the workman whose dispute it is alleged to be espousing before the Tribunal.

13. According to me. it is immaterial whether the said Union is a general union of the workmen of a particular industry or it is a Union of the particular establishment relating to which the dispute arisen between it and its workmen. In each case in ascertaining whether the individual dispute has acquired the character of an industrial dispute or not the test is whether at the date of the reference the dispute was taken up or supported by the Union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen. In the instant case, the order of reference seems to be a dispute between M/s. Sri Nathji Bhandar and its workmen represented by Sri Nathji Bhandar's Employees' Union. Therefore, there cannot have any value of support of such Division bench judgement in favour of Mr. Bose's espousal.

14. Further he has referred to paragraph 8 of 1976 Lab.I.C 1685 (Debrqj Arya & Ors. vs. Judge First Industrial Tribunal. West Bengal & Ors.) whereunder a Bench of this Court held that unless and until it is specifically proved before the Tribunal that the union had authority to act on their behalf in espousing the cause the

Tribunal cannot pass any order. If passed that will be a perverse finding and exceeding jurisdiction of the Tribunal.

15. According to me, when Division Bench judgement on the strength of the Supreme Court judgement has already held that the date of reference is a guiding factor and it is factually available that the Union espoused the cause at the time of reference when Tribunal specifically went to the factum under reference on the basis of the materials.

16. Mr. Amal Baran Chatterjee, Learned Counsel, appearing for the Union, apart from taking various defences as above, challenged the maintainability of the writ petition. According to Mr. Chattejee. no challenge has been thrown as regards the reference but in respect the award. Learned Judge of the Tribunal decided the question on the basis of the mixed question of facts and law. Writ Court is not a Court of appeal to hear the matter even if it could have passed different order had there been a scope of appeal. Therefore, there is no scope of interfering in the same.

17. He wanted to remind the Court in respect of the Tata Cellular's case reported in Tata Cellular Vs. Union of India, . In its paragraphs 93 and 113 it is said that the duty of the Court is to confine itself to the question of legality i.e. (i) whether a decision making authority exceeded its powers? (ii) committed an error of law: (iii) committed a breach of the Rules of the natural justice; (iv) reached a decision which no reasonable Tribunal would have reached or (v) abused its powers. Similarly, by showing paragraph 113 he wanted to say that the modern trend points to judicial restraint in administrative order. He said that the Writ Court does not sit on Appeal but raises issues to show the manner in which the decision was made. I have no doubt in my mind in respect of such ratio of the judgement. But, according to me. such judgement is delivered on an administrative order. However, it is well-settled that since the Tribunal is a final fact finding authority Writ Court has enough power to consider legality or validity of the order which is also the true import of the judgment referred by Mr. Chattejee. The only question is that whether in the garb of such review the Writ Court is entering into the arena of the facts and behaving like a Court of Appeal or not. I believe that this is not such a case which by now everybody understood. However, taking into account all aspects of the matter I am of the view that the decision and award made by the Learned Judge, 8th Industrial Tribunal dated 7th August, 2002 is justifiable and should not be interfered with. Therefore, the writ petition stands dismissed. However, no order is passed as to costs. Let an urgent Xeroxed certified copy of this judgement, if applied for, be given to the Learned Advocates for the parties within two weeks from the date of putting the requisites.