
(1959) 08 KL CK 0026
In the High Court Of Kerala
Case No : O.P. 415 of 1958

Palace Administration Board, Tripunithura	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 27-08-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : AIR 1960 Ker 151 : (1960) 1 LLJ 178

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Advocate : V.K.K. Menon, C.S. Padmanabha Iyer and V.G. Bhaskaran Nair, for the Appellant; Govt. Pleader for Nos. 1 and 2 and V. Viswanatha Menon and V.N. Gopala Krishnan Nair for No. 3, for the Respondent

Final Decision : Allowed

Judgement

T.K. Joseph, J.

1.This is a petition by the Palace Administration Board, Tripunithura. The petitioner prays for the issue of a writ of certiorari or other appropriate writ or order quashing an order dated 9-6-1958 passed by the Industrial Tribunal, Ernakulam, and also for a writ of prohibition or other appropriate writ or order directing the Industrial Tribunal not to proceed with the adjudication of Industrial Dispute No. 25 of 1958. The three respondents are the State of Kerala. the Industrial Tribunal, Ernakulam, and the V.T.K. Estate and Palace Fund Employees Union, Tripunithura, respectively.

2. The facts necessary for the decision of the petition may be stated. The V.T.K. Estate or the Valiamma Thampuran Kovilakam Estate consists of properties belonging.to the Royal family of Cochin, the income of which was utilised for the maintenance of the ladies and minor members of the Royal family. Originally the Estate was under the management of the seniormost lady of the Royal family. The Palace Fund was one constituted by the Government of Cochin for the

maintenance of junior ladies of the Royal family. By a Royal Proclamation promulgated by the Maharaja of Cochin in 1929, the management of the Estate and the Palace Fund was assumed by the Government of Cochin. Just before the integration of the States of Travancore and Cochin, the Maharaja of Cochin promulgated another Proclamation on 29th June 1949 by which the Palace Administration Board was constituted to manage the Estate and the Palace Fund. The Proclamation declares this Board as a body corporate, having perpetual succession and a common seal.

The third respondent is a Union of the employees of the Board. There were disputes between the Union and the Board and the Government of Kerala by order dated 10-3-1958 referred the same for adjudication to the Industrial Tribunal, Ernakulam. The Board raised a preliminary point before the Tribunal that it had no jurisdiction to proceed with the enquiry as the Board was not carrying on any industry as defined in the Industrial Disputes

Act. It was contended that the dispute would not therefore fall within the scope of the Industrial Disputes Act. The second respondent, the Tribunal, overruled this contention by an order dated 9-6-1958, copy of which has been produced as Ext. P-3. This is the order sought to be quashed by the petitioner,

3. The decision of this petition depends on the construction of the word "industry" in the Industrial Disputes Act, XIV of 1947. Section 2(k) defines "industrial dispute" as follows:

"(k) "Industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

Clause (j) of Section 2 defines "industry" as

""any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen."

According to the Tribunal the work carried on by the Board is an "undertaking" as defined in the Act, and this is the position taken up by the respondents in. This petition.

4. Before considering the question whether the work of the Board may be treated as an "undertaking" it is useful to refer to some of the reported decisions on the point. In D.N. Banerji Vs. P.R. Mukherjee and Others, the Supreme Court observed:

"There is nothing to prevent a statute from giving the word "industry" and the words industrial dispute" a wider and more comprehensive import in order to meet the requirements of industrial peace and economy, a fair and satisfactory adjustment of relations between employers and workmen in a variety of fields of

activity. It is obvious that the limited concept of what an industry meant in early times must now yield place to an enormously wider concept so as to take in various forms of industry, so that disputes arising in connection with them might be settled quickly without much dislocation and disorganisation of the needs of society and in a manner more adapted to conciliation and settlement than a determination of the rights and liabilities according to strict legal procedure and principles. Conflicts between capital and labour have now to be determined more from the standpoint of status than of contract. Without such an approach, the numerous problems that now arise for solution in the shape of industrial disputes cannot be tackled satisfactorily."

The word "undertaking" in Section 2 was also considered, and it was held:

"Though the word undertaking in the definition of industry is wedged in between business and trade on the one hand and manufacture on the other and though therefore it might mean only a business or trade or undertaking, still it must be remembered if that were so, there was no need to use the word separately from business or trade. The wider import is attracted even more clearly when we look to the latter part of the definition which refers to calling, service, employment or industrial occupation or avocation of workmen. "Undertaking" in the first part of the definition and "industrial occupation or avocation" in the second part obviously mean much more than what is ordinarily understood by trade or business. The definition was apparently intended to include within its scope what might not strictly be called trade or business venture."

This view was followed in a later decision of the Supreme Court in *Baroda Borough Municipality Vs. Its Workmen*, . The question for decision in the latter case was whether the workers in a municipal department engaged in the generation, supply and sale of electric energy were entitled to bonus out of the surplus earnings of the said department. Though the claim of bonus was disallowed on the ground that this department could not be treated as a separate unit, the principles laid down are useful for the decision of this case. Referring to the earlier decision in *D.N. Banerji Vs. P.R. Mukherjee and Others*, it was observed:

"It is now finally settled by the decision of this Court in *D.N. Banerji Vs. P.R. Mukherjee and Others*, *D.N. Banerji Vs. P.R. Mukherjee and Others*, that a municipal undertaking of the nature we have under consideration here is an "industry" within the meaning of the definition of that word in Section 2(j) of the Industrial Disputes Act, 1947, and that the expression "industrial dispute" in that Act includes disputes between municipalities and their employees in branches of work that can be regarded as analogous to the carrying on a trade or business."

In *Hospital Mazdoor Sabha v. State of Bombay* 1957 Lab LJ 55 (Bom) the question was whether the dispute regarding retrenchment of some workmen in the J.J. Group of hospitals under the administrative control of the Surgeon-General of the Government of Bombay was an industrial dispute. Chagla, C.J.,

who delivered the judgment of the Bench held that "industry" as defined in the Act was not confined to an activity of a commercial character and that it did not necessarily import a profit motive or the employment of capital. It was also observed that industry was not only any business or trade or manufacture but that it was also an undertaking or calling of employers and that no expression could have been used with a wider import and connotation than the expression "undertaking". One of the contentions raised by the State of Bombay in that case was that these hospitals were run by the Government and that in doing so, the Government was not running any "industry."

It was held that the correct approach would be to decide what activities were essential to the authority of Government as such, what functions only the Government could discharge and which it would not be competent for any private individual, to discharge. It was further held that if there was an activity which could be undertaken by a private agency and the same activity was carried on by the Government, then the same principles should govern that activity whether it was carried on by private agency or by Government. According to this decision the test to determine whether a particular activity undertaken by the Government was an industry would be to consider whether that activity would have been an industry to which the Act applied if it had been undertaken by a private agency; if the Act applied to that activity, it was quite immaterial whether the same was undertaken by the Government.

5. There are decisions which considered the question whether a solicitor's business would be an "industry" for the purpose of the Act. It was held by the Calcutta High Court in *D.P. Dunderdele and Others Vs. G.P. Mukherjee and Another*, and by the Bombay High Court in *National Union of Commercial Employees v. Meher* 1959 Lab LJ 38 : (AIR 1960 Bom 22) that the work of a solicitor was not an "undertaking" as mentioned in the Act. In both the cases it was held that in order that an enterprise may constitute an industry it must be one for the carrying on of which it was necessary to employ labour and one which required the joint efforts of both the employer and the employed. In the latter case it was also pointed out that sections 25-FF and 25FFF indicated that "undertaking" was used in the sense of an enterprise which could be owned and transferred,

6. Some of the principles which can be gathered from the decisions stated above are that the expression "undertaking" should be construed in the wide manner, that the absence of a profit motive is irrelevant in considering whether an enterprise is an "undertaking" or not, that it must be one which requires the co-operative effort of the employer and the employees, that it must be one which is capable of being owned and transferred, and that it is the nature of the enterprise irrespective of who does it that determines whether it is an "industry" or not. The question arising in this case may be examined in the light of these principles,

7. The work carried on by the Board is one which was originally undertaken by

the seniormost lady of the Royal family. The work was first entrusted to the Government of Cochin under Proclamation of 1929 and later to the Board, by the Proclamation of 1949. As pointed out earlier it is immaterial whether it is carried on by the owner or by the Government or the Board if it is an industry or undertaking. The question must therefore depend upon the nature of the work done. The Board looks after the properties of this Estate and administers the Funds for the benefit of the junior members of the Royal family. Thus the work is one which may normally be treated as that done by the owner of properties fetching a surplus income. It is difficult to hold that if the Valiamma Thampuran had been herself doing the work, this could have been treated as an industry or undertaking.

One test of the correctness of a proposition is that it must apply to all cases of the same category. If the work of management done by the owner of an immovable property fetching some surplus income cannot be treated as an industry, it cannot become one merely because there are a number of properties yielding a substantial income. Now, the position would be different if the Board undertakes a business venture such as starting an industry with the surplus income of the Estate or the Fund. In such a case the dispute between the Board and the employees of that industry would certainly be an industrial dispute within the scope of the Act. Sri Balagangadhara Menon, learned Counsel for the respondents, argued that the Board had invested part of the surplus income in constructing a building at Ernakulam and letting it on rent.

In fact it is practically on this fact that the case for the respondents is founded. If the owner of an item of immovable property invests surplus income in erecting building which he gives on lease, he cannot be treated as carrying on an undertaking. To hold otherwise would mean that any person who utilises his savings for constructing a building which he may not require immediately for his occupation and which he therefore lets out would be deemed to be carrying on an industry thereafter. However wide a connotation is given to the expression "undertaking", I do not think this result would follow. The same principles must apply to this case also. I am therefore unable to hold that the mere fact that a building was constructed and leased out by the Board would make the work of the Board an "undertaking" as contemplated by the Act.

8. The third respondent observed: "I have stated above, though there is no profit making motive to begin with, an efficient and prudent administration of the properties both movable and immovable necessarily launches the Board into undertaking a business or trade as defined in the Act." According to this view if the administration is inefficient or is carried on in an imprudent manner it would not amount to an industry or undertaking. An enterprise cannot become or cease to be an industry or undertaking depending on the prudence or efficiency with which it is carried on. Learned counsel for the respondents did not attempt to support this argument.

9. In the view that I have taken, namely, that the work carried on by the Board

would not come within the definition of an "industry" if it is carried on by the seniormost lady of the Royal family and that the nature of the work is only management of properties on behalf of the owner, it must be held that it does not amount to an "industry" as defined in the Act. The dispute referred for adjudication is therefore not an "industrial dispute" and the Tribunal has no jurisdiction to proceed with the enquiry. The order (Ex. P3) is quashed and the second respondent is prohibited from Further conducting the enquiry. The original petition is allowed in these terms but, in the circumstances, I direct the parties to hear their respective costs.