
(1962) 04 CAL CK 0006
In the Calcutta High Court

Panday (S.N.)

APPELLANT

Vs

State of West Bangal and Others

RESPONDENT

Date of Decision : 18-04-1962

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Industrial Disputes Act, 1947 — Section 10, 12

Citation : (1962) 2 LLJ 457

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—The Marwari Relief Society (hereinafter referred to as the "society") is a company incorporated under the Companies Act and one of its objects is to supply essential commodities to the members of the public at cheap rates. It claims to be a non-profit making concern. The society has various departments, including hospitals, charitable dispensaries, sanatorium, relief work, training in craftsmanship, etc. It runs also a sweetmeat shop.

2. The petitioner is the secretary of the Marwari Relief Society Mazdoor Union, a registered trade union of the workers in the different departments of the society.

3. Alleging that the sweetmeat shop of the the society had made a large profit in the year 1958-59, the workmen of the Marwari Society (sweetmeat shop) presented a charter of demands claiming payment of

- (i) two months" total wages as Puja bonus,
- (ii) three months" total wages as bonus for the year 1958, and
- (iii) delimitation of working hours to eight hours a day.

The society did not agree to the demands.

4. Intervention of the Labour Commissioner was sought by the workmen in the matter, by letter, dated 31 August 1959. Conciliation proceeding, however, was

not immediately taken up. It was only on 5 March 1960 that a labour officer for the first time took step calling for a joint conference between the Representatives of the management and the workers, in the matter of the charter of Remands. On 4 April 1960, the society sent its comments on the charter of demands to the following effect:

That the claim of 8 working hours and the farther claim of bonus at 2 months" and 3 months" rate as made by the union is absolutely untenable and mala fide.

That on 9 September 1959 the workers themselves have addressed to the secretary of the society a memorandum wherein they themselves have Agreed to work for 10 hours a day according to the provisions of Bengal Shops and Establishments Act, 1940. The claim of 8 hours per day is therefore mala fide and should be rejected. A copy of the said memorandum is annexed herewith for your kind perusal.

The claim of bonus at various rates as made in the charter of demands is also not legally maintainable inasmuch as in the award between the same parties passed by Sri M.N. Gan, Judge, and published in the Calcutta Gazette of 14 May 1959, the learned Judge has found that this society was running at a loss since the year 1955-66 until 1967-58 and accordingly rejected the claim of months" bonus after thoroughly considering the merits of the claim. In the year 958-59 there has been no improvement in the situation, and the society is still running at a loss. This being the position, the question of payment of 3 months" profit bonus does not arise at all. The claim of Puja bonus at 2 months" rate is hereby categorically denied by the society inasmuch as this society has never granted any Puja and/or customary bonus.

5. The workers" union gave a rejoinder to the above letter from the management, as Herein below set out:

Referring to the letter of the management No. 60-61/26, dated 4 April 1960, we are to submit the comments as follows:

The judge of fourth industrial tribunal dealt with the bonus for annual, but we have asked the bonus on profit-sharing basis only for the workmen of Puri Methai Dokan, as the management are making huge profit from this shop.

In this connexion, we would request yon to kindly inspect the accounts and expenditures of the Puri Methai Dokan only and find the truth of our facts.

6. It is alleged by the petitioner that no joint conference was held, although the workers" union sent various letters and representations to the authorities asking for an early settlement of the dispute.

7. At last the union received the following letter, dated 24 November 1960, from the State Government, which reads as follows:

With reference to your representation to the Labour Commissioner, West Bengal, on the above subject, I am directed to say that it has transpired on enquiry that

the sweetmeat shop is not an independent establishment but a constituent part of the Marwari Relief Society. It has not been proved that the society as a whole made any profit during the year 1958-59. Earnings from the shop cannot be considered separately for payment of bonus to the shop's employees.

2. The working hours of the shop employees are already covered by the Bengal Shops and Establishments Act, 1940.

3. In view of what has been stated above, Government considers no further intervention in the matter to be called for.

8. The workers' union made various attempts thereafter to have the decision taken by the State Government changed and at last, on 7 August 1961, received the following letter from the Minister-in-charge of the Labour Department:

With reference to the union's representation on the above subject, I am to say that I have carefully examined the matter. The articles of association of the society show that one of the objectives of the society is to provide for cheap canteen for poor people. The sweetmeat shop is ran for the benefit of the poor. Besides; whatever profits are earned by the sweetmeat shop go into the general fund for running charitable institutions.

The sweetmeat shop cannot, therefore, be isolated from the other charitable institutions of the society for computation of profits.

2. In view of what is stated above, I do not find any ground to revise Government's decision not to intervene in the matter already communicated to you.

9. The propriety of the decision is being challenged in this rule and the petitioner has asked for a writ in the nature of mandamus directing the State Government to take steps u/s 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947.

10. Mr. Arun Kumar Dutt, learned Advocate for the petitioner, contended that Section 12(4) of the Industrial Disputes Act, which authorizes a conciliation officer to report on failure of settlement, was ultra vires the Constitution, being repugnant to Articles 14 and 19(1)(g) of the Constitution. Elaborating his argument, Mr. Dutt contended that the opinion of the conciliation officer that a settlement cannot be arrived depended on his subjective opinion and he may report failure without making proper attempts to effect a settlement, as he Bald, was done in the instant case. The argument is not well-conceived. Dereliction of duty on the part of the conciliation officer does not make the provision of Section 12(4) of the Act ultra vires the Constitution. Section 12(4) requires the conciliation officer to submit a full report as to the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, the settlement could not be arrived at. His opinion is not, therefore, subjective

opinion but is controlled by the objective of reasonings to be given by him, in the background of steps taken by him to effect the settlement. The first branch of Mr. Dutt's argument therefore fails.

11. Mr. Dutt next contended that Section 10 read with Section 12(5) of the Act, which authorizes the appropriate Government not to refer a dispute for adjudication, was also discriminatory and offended both against Articles 14 and 19(1)(g) of the Constitution. This argument again is misconceived. The appropriate Government, when it does not make a reference, records its reasonings and communicates the same to the parties. Therefore, unless the reasonings themselves are vitiated by mala fides and extraneous considerations, the vires of Section 10 read with Section 12(5) of the Act does not come up for question. The intra vires nature of Section 10 of the Act is now also covered by a decision of the Supreme Court in *Niemla Textile Finishing Mills Ltd. Vs. The 2nd Punjab Industrial Tribunal*, .

12. Mr. Dutt then contended that the State Government was really influenced by extraneous consideration in refusing to refer the matter to tribunal for adjudication and a writ of mandamus should compel the Government to refer the matter. In support of his contention, he relied on the following observation of Gajendragadkar, J., in *State of Bombay Vs. K.P. Krishnan and Others*, :

It is clear that the Act has been passed in order to make provision for the investigation and settlement of industrial disputes, and if it appears that in cases falling u/s 12(5) the investigation and settlement of any industrial dispute is prevented by the appropriate Government by refusing to make a reference on grounds which are wholly irrelevant and extraneous, a case for the issue of a writ of mandamus is dearly established.

13. In this contention of law Mr. Dutt is right and is supported by the Supreme Court judgment above referred to.

14. In trying factually to establish the contention, Mr. Dutt contended that the different departments of the society were not functionally integrated units but distinct units. The workers thus became entitled to profit-sharing bonus on the aggregate profit of the society in the sweetmeat shop. He drew inspiration from certain observations of Das Gupta, J., in *Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union and Its Workmen*, . In that case his lordship observed that where an entrepreneur was engaged in several activities each of which came within the definition of "industry," no hard and fast rule could be laid down for the decision of the question whether they formed part of one single industry for the calculation of the surplus profits for distribution of bonus to workmen in one of the unite. Each case has to be decided on its own peculiar facts. In some cases the several activities, each of which by itself comes within the definition of industry, were so closely linked together that no reasonable man would consider them as independent industries. There may be other cases where the connexion between the two activities was not by itself sufficient to Justify an

answer one way or the other, but the employee's own conduct in mixing up the capital, staff and management may often provide a certain answer. The most important test is that of functional integrality meaning thereby such of finance, employment and labour. The Court has to consider how far there is "functional integrality" meaning thereby such functional interdependence that one unit cannot exist conveniently and reasonably without the other and the further Question whether in matters of finance and employment the employer has actually kept the two units distinct or integrated.

15. Mr. Dutt could not satisfy me on the materials on record that there was no functional integrality between the sweetmeat shop and other departments of the society, say for example, the handicraft training department or the hospital department. In the affidavit-in-opposition, the financial interdependence of the different departments was stressed, particularly of the sweetmeat shop of which various expenses were debited in the general fund of the society. I cannot therefore accept this branch of the contention.

16. Mr. Dutt lastly contended that the emphasis on the charitable character of the society by the Minister was an extraneous consideration. He further contended that refusal to refer the dispute on such extraneous consideration should be interfered with by this Court. The emphasis on charity may have been an ornamentation, which should better have not been introduced, but the real ground on which the State Government refused to refer was that the society had made no profit out of which the bonus could be paid. The consideration being the overriding consideration, the refusal by the State Government to refer the matter cannot be condemned.

17. For the reasons aforesaid I am not inclined to interfere. This rule is discharged without any order as to costs.