
(2004) 09 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 29019 of 2002

Paramekkavu Devaswom

APPELLANT

Vs

Ramachandran

RESPONDENT

Date of Decision : 16-09-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2004) 3 KLT 553 : (2005) 1 LLJ 359

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : Antony Dominic, E.K. Nandakumar, A.K. Jayasankar Nambiar, Priya Mahesh and Priya Manjooran, for the Appellant; N. Nagaresh and Thomaskutty, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—This Original Petition arises from an award passed by the Industrial Tribunal, Palakkad in J.D. No. 48/99. A dispute had been raised by the 1st respondent herein about the termination of his services, after a formal domestic enquiry had been held. The 1st respondent was employed as a watchman by the management of Paramekkavu Devaswom, Thrissur. He was appointed from 1.1.1993 and his service were terminated on 30.7.1997.

2. The Tribunal had to answer the preliminary objection as to whether the workman concerned was entitled to claim the privileges of a workman, as an objection had been raised that the management did not come within the purview of an industry as defined u/s 2(j) of the Industrial Disputes Act.

3. Though an enquiry had been held, for want of full records, the request of the management for permission to adduce materials de novo had been accepted. Opportunity had been given to them to prove the allegations. After evaluation of the materials so placed, the Tribunal held that it was a case where workman was entitled to reinstatement. Taking notice of delay on his part to agitate the issue

25% of the back-wages had been directed to be withheld. The Devaswom has filed this Original Petition pointing out that the Tribunal had overlooked its objections without sufficient justification. They did not deserve to be characterised as an industry. Also in view of the allegations, and resultant loss of confidence, they plead that even if it is found that there is any disproportionality in punishment, the relief of reinstatement in no circumstances should have been granted.

4. Sri. Antony Dominic appearing for the petitioner took me to the details. He submits that the reason given by the Tribunal for holding that the establishment came within the purview of definition of "Industry" is on reasonings, which are basically defective. It is pointed out that the award proceeded on an assumption that the temple as a whole was an industrial activity and this consequently had led the Tribunal to commit mistake, since the application of Section 2k(a) which defined the Industrial Establishment or undertaking, had been overlooked. The objection is centered round the findings in paragraphs 9 and 10 of Ext.P1 award, which I would extract herein below:

"9. There can be no doubt that the above buildings and other businesses of the management-devaswom were established from the income of the temple and it cannot be held that there is no profit from the temple. It is observed from the annual reports that the management has revised the rates for various vazhipads. If there was no profit motive, it was not necessary to enhance the rates of vazhipad. The management is also earning money by selling prasadam; cassettes, photos etc., within the premises of the temple. Therefore, it is clear that at least some business activities are being carried on in the premises of the temple.

10..... There can be no doubt, that the relationship between the devaswom board/trust and the persons employed for the various activities of the temple is master and servant or employer and employee. The devotees are now treated as customers and prasadam is manufactured in factories and packed just like any other consumer product and sold for price through temples. The special treatment given to VIPS and VVIPS in temples is just like a businessman treating his important customers. For all these reasons, I am of the view that temple and its managing agency viz. the Devaswom Board have now acquired the status of "industry" as defined in Section 2(j) of the I.D. Act."

5. There might be merit in the criticism, but that itself need not be a reason to upset the award. But, advertence to definition of "industrial establishment" (Section 2(ka)) would not have advanced the cause of the petitioner to any appreciable extent. Thus, it is not as if the matter has not been considered by the Tribunal with caution. He was aware of his function as an adjudicator and though it may not be possible to support some of the reasonings, if critically viewed, it can very well be stated the ultimate finding of the Tribunal that the workman was engaged in an industry is unexceptionable.

6. Another argument put in by the petitioner is that the workman was engaged exclusively in the activities of the temple and coupled with his duties as a watchman, he was being engaged in performance of the duties closely linked with "Poojas" of the temple and receiving koor money. The plea is that the worship and essentialities connected therewith are rituals, carried on with the aid and assistance of several persons and work of 1st respondent can never be one which makes him a "workman" in the industry.

7. However, the submissions as above were controverted by the learned counsel for the respondent. The systematic activities of the management were being carried on analogous to an industry by a commercial firm in every sense of the term. The commercial activities in business lines were inseparably linked with the establishment as a whole, and one or two workmen could not have been segregated, even on the basis of duties expected of them. According to Mr. Nagareth, the test to be applied is as to whether the activities of Devaswom, if carried out by a private individual, would have been considered as industrial in nature. If so, the exception claimed was of no consequence. He maintains that the Tribunal has not committed any error in understanding the situation. The ultimate direction resulting in reinstatement also is in conformity with the overall findings arrived at.

8. While we examine the rival contentions, it may be necessary to examine the background in which the activities surrounding the temple had developed. Perhaps in the early stages, what might have been there was a place for worship, pure and simple, where devotees thronged to offer prayers. But, by passage of time, the activities had gradually developed by the patronage of the State Administration and liberal offerings of devotees. The temple came to possess substantial properties. Naturally, for the proper administration of such properties, and for proper arrangement of "Poojas" and maintenance of the temple as such, investiture of power, and an organised system had to be introduced. Extensive properties, by itself were sufficient to generate wealth. Personnel were to be engaged for administrative and executive work and multifarious other activities. This gradual, but definite changes have made the substantial difference as between the past and the present.

9. Deity of a temple always is recognised as a legal person. The claim is not against the temple as it is. Here the employer is shown as the Management of Paramakkavu Devaswom. I feel that this itself is sufficient to dispel controversies. A temple as such cannot come within the definition of industry. Nor can that come as an industrial establishment or undertaking as envisaged u/s 2(k) of the Industrial Disputes Act. Temples are associated with religious activities, for satisfying the spiritual needs of believers. But as referred to earlier, the body of the management who are entrusted with the duties of looking after the properties of a religious institution stands on a different footing. The Industrial Disputes Act is a pre-independent statute, and even if perhaps the statute makers may not have intended to bring in an all encompassing definition,

so long as there is no specific exclusion, interpretation, should be on the basis of the plain meaning gatherable, and text of the statute.

10. Devaswom literally means the properties of Deva, viz. the God. The properties require to be appropriately managed. Though Deva (God) could never be equated to an employer, the properties received by him as gifts when invested for any purpose including generating wealth, loses the exclusive sanctity which it might originally enjoy. What is managed by Devaswom Authority, is the wealth of the deity, which has come to their hand. It may be for the benefit of community, but that also is not very relevant. An establishment has thus got itself created to manage the wealth, viz. Devaswom properties. The controller of the Estate, interestingly becomes the controller of the affairs of the God as well though the accretion of wealth always is thanks to the presence of the deity. The statutes could be equated to that of a minor. Thus the "All powerful" comes within the tutelage of the Manager, as next friend. Therefore, the essential religious activities pertaining to the Pooja and rituals atone need to be separated from the industrial activities, all others coming under the Industrial Disputes Act. As to the category who are to be so segregated from the Industrial Disputes Act, is not an issue coming up for consideration here.

11. The definition of industry has two limbs, one giving accent to the element of activities from the point of view of employer, and the other looked from the perception of a person employed. The idea was to bring in all human endeavour within the four corners of the definition. In simple terms, if therefore a service, or employment was there, it merited to be called an industry, and consequently it become an industrial establishment.

12. In the present dispute, as could be seen from Ext. P5, the activities of the Devasworn, was multifaceted and included almost all commercial ventures as is usually understood. They have to maintain a substantial Establishment. As pointed out by Sri. Nagaresh, the commercial activities included renting of premises/furniture, agriculture, conduct of chitties and included running of educational institutions. They had to engage staff mainly clerical and of supportive nature, drivers, mahouts etc. The management directly conducted commercial Exhibitions, which were capable of bringing wealth. All these activities are separable from the essential rituals referred to above, and have characteristics of an organised business activity.

13. Of course, the learned counsel for the petitioner referred to a decision reported in Manager, Panchasara Jain Derasar, Patna Dist. Vs. Mahmadkha Gajikha Baloch, which stood confirmed by the Supreme Court in Mahamadkha Gajika Baloch Vs. Manager, Panchasara Jain Derasar, as also Harihar Bahinipati and Ors. v. State of Orissa (1965 (I) LLJ 501). There of course give general guidelines to aid and assist the Court for coining to test the presence of activities, which is analogous to a system of carrying on an industry. Reference was also made by Mr. Dominic to the commentaries by Malhotra on Industrial Disputes Act 6th Edition (Page 386). However, the decision cited are not helpful

to the petitioner.

14. The 1st respondent appears to be a ministerial, subordinate staff attached to an establishment engaged in commercial activities. The only circumstance that he was an employee attached to the temple expected to partake in rites by itself is not a clinching circumstance. As per the conditions of his service, he was transferable to any of the other establishments, viz, office, college, auditorium etc. As a watchman, he was discharging duties, which was expected of a person, who was employed in an industrial undertaking. Pevasworn employees are governed by Rules, and the benefits extended to them even include membership in the Employees Provident Fund Scheme. At least as at present, there is no reason to hold that they be held as remaining outside the purview of the Industrial Disputes Act.

15. As a participant of pooja rites, some of the employee., might be getting "kooor panain". It is explained as a payment, taking note of customary practice and usually extended to members of certain families, who associate themselves with the temple. The Tribunal has found that the receipt as above were not reckonable as wages. A privilege so received, is riot to lead him away from his substantive rights.

16. The discussions as above strengthen my conclusion that the 1st respondent was a workman, attached to an industry, and therefore, the dispute was maintainable and Tribunal had jurisdiction to decide the issue referred for adjudication.

17. The next two issues could be discussed together. They are;

- i) Whether there was any element of misconduct on the part of the 1st respondent,
- ii) Justifiability of the finding including punishment, and the sustainability of the directions in the award.

The allegation as against workman was that he had taken initiative for holding of a meeting of the watchmen in the "Gopuram" within the temple premises. An explanation had been called for. It has come out that there was a meeting of 4 or 5 persons wherein they had discussed about their affairs. It is however asserted that there was no disturbance caused to the tranquility of the temple atmosphere. The management did not rely on the enquiry held; the Tribunal was to be the arbitrator of the materials placed before him. According to the Tribunal, there was no element of misbehavior from them. It had not been possible to establish that such a meeting of a few people or a discussion of their personal matters, was a conduct, which was objectionable, or one prohibited. The 1st respondent had apologized for the conduct. If the allegation is as above, it is too much to contend that there was actionable conduct. Sri. Dominic points out that there is no definite finding by the Tribunal as to whether there was misconduct or not. But the argument is too feeble. Of course, observation made in the award

may be read as a finding to the effect that it is a case of misconduct. But he is definite that this does not merit severe punishment of dismissal. The Tribunal obviously had adverted to the conduct alone. Leaving it apart, it has not been primarily possible for the management. to establish that what has been alleged is actionable misconduct.

18. If that be the case, the further argument of the management that they had lost confidence in the workman also does not have any meaningful significance. It was pointed out that there were occasions for the management to take action against him. But that also have no relevance since it has not been possible for the management to establish that there was culpable dereliction on the part of the workman now. Therefore the protracted proceedings were totally unwarranted. Definitely the allegations themselves could not have been utilised to get rid of an employee. The request has been rightly turned down by the Tribunal.

19. In the aforesaid circumstances, I do not think there is justification for the management for contending that the Tribunal has lost sight of the issue that has been presented before it or any relevant aspects have been over looked. The award does not suffer from any material irregularities so as to warrant interference of this Court, excepting perhaps in the matter of grant of back-wages. Even in a case where the termination was irregular or unwarranted, the workman has to agitate his rights appropriately. The delay in the matter of raising the disputes is not explained. There is no allegation of mala fides. Obviously the petitioner had been attempting to enforce discipline though there was an over reaction. Therefore, back-wages for the entire period should not have been awarded. The evidence in these region is scanty. Also I may take notice of the principles laid down by the Supreme Court in Steel Authority of India Ltd. Vs. Presiding Officer and Another, . Back-wages at 50% alone will be admissible to the 1st respondent and too only from the date of reference of the dispute viz. 16.7.1999.

The Original Petition is dismissed, but modifying the directions in the Award to the above extend. Parties are to bear their respective costs.