

(1958) 06 BOM CK 0017

In the Bombay High Court

Case No : Reference (I.T.) No. 81 of 1958

Pereira Fazalbhoy and Co. and Others

APPELLANT

Vs

Their Workmen

RESPONDENT

Date of Decision : 30-06-1958

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(5), 2

Citation : (1958) 2 LLJ 365

Hon'ble Judges : M.R. Meher, J

Bench : Single Bench

Judgement

1. This is a reference by the Government of Bombay under S. 12(5) of the Industrial Disputes Act, 1947, for adjudication of a dispute between (i) Pereira Fazalbhoy & Co., Bombay, (ii) Sri W. E. Pereira, (iii) Sri M. S. Desai and (iv) Sri M. H. A. Fazalbhoy (hereinafter referred to as the opponents), and the workmen employed under them over the following demand :

"An adequate and substantial bonus for the two years ending the 31 March 1956 and the 31 March 1957, equivalent to 33-1/3 per cent of annual earnings of the employment for each year, shall be paid to all employees who have worked at any time during the above two years without any conditions attached."

2. Pereira Fazalbhoy & Co. were a firm of solicitors which has been dissolved with effect from 15 November 1957. Sri W. E. Pereira, Sri M. S. Desai and Sri M. H. A. Fazalbhoy were the partners in the firm. When the opponents were asked to file a written statement in answer to the statement of claim filed on behalf of the workmen by the National Union of Commercial Employees, Bombay, they raised a preliminary objection that the profession carried on by them, viz., that of solicitors, is not an industry within the meaning of S. 2(j) of the Industrial Disputes Act, 1947, and so the present dispute is not an industrial dispute, that the reference made by the Government is therefore bad in law and does not confer any jurisdiction on this tribunal to adjudicate on the issue referred to. As this preliminary objection went to the root of the case it was heard as a

preliminary issue.

3. The sub-section that has to be interpreted and applied in this case is S. 2(j) of the Industrial Disputes Act, which defines "industry" as follows :

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

The word "employer" is not defined except in relation to an industry carried on by or under the authority of a department or Government or a local authority. Sri Buch who has appeared for the union has argued that the word "calling" is sufficiently wide to include the profession of solicitors. He has relied on a case decided by the Bombay High Court in the Hospital Mazdoor Sabha v. State of Bombay 1957 I L.L.J. 55 in which the learned Chief Justice observed :

"Now when we look at the definition of "industry," it is not confined to an activity of a commercial character. Nor does it import unnecessarily a profit motive or the employment of capital. Industry is not only any business or trade or manufacture. but it is also an undertaking or calling of employers, and no expression could have been used with a wider import and connotation than the expression "undertaking." Undertaking is nothing more than any work or project which a person might engage in. Work or project may have no commercial implication. It might not be engaged in with the object of making profit. It might be engaged in from the motives of philanthropy, and even so it would be an undertaking in the wider sense in which that expression is used in the definition of "industry"."

The question in that case was whether the activity of Government in connexion with a hospital constitutes an undertaking within the meaning of the expression used in the Industrial Disputes Act. In my opinion these observations cannot be pressed into service for holding that the profession of a solicitor comes within the meaning of "industry" in S. 2(j) of the Act. In the case of D. N. Banerji v. P. R. Mukherji and another 1953 I L.L.J. 195 Chandrasekhara Ayyar, J., observed :

"It is also clear that every aspect of activity in which the relationship of employer and employee exists or arises does not thereby become an industry as commonly understood. We hardly think in terms of an industry where we have regard, for instance, to the rights and duties of master and servant, or of a Government and its Secretariat or the members of a medical profession working in a hospital. It would be regarded as absurd to think so."

That was a case of a municipality. The learned Judge pointed out that municipalities carry out many functions which partake of the nature of industry. It may and often does supply power and light to inhabitants of a municipality and if such public utility services, when carried on by private companies or corporations be industries, there is no reason why, if a statutory corporation took it up, it would cease to be an industry. The learned Judge went on to observe

that the definition in the Act include disputes that might arise between municipalities and their employees in branches of work that can be said to be analogous to the carrying out of a trade or business, and left open the question whether disputes arising in relation to the purely administrative work fell within the ambit or not.

4. Now, let us consider whether in the context the word "calling" is wide enough to include the solicitor's profession. The word "calling" is defined in the Concise Oxford Dictionary to mean "occupation, profession, trade; persons following a particular business." Now the question is which of these meanings is to be given. The word "calling" is used in association with the words "business, trade, undertaking, manufacture." It is a rule laid down by Lord Bacon "copulatio verborum indicate acceptationem in eodem Sensu" [Bacon's Works, Vol. 4, p. 26; cited in *Jonmenjoy v. Watson* 9 App. Cas. 561. The maxim when translated means "the coupling of words together shows that they are to be understood in the same sense." The rule is embodied also in the more familiar maxim *noscitur a sociis*." As has been put in Maxwell's Interpretation of Statutes (10th Edn.), at p. 332 :

"When two or more words which are susceptible of analogous meaning are coupled together *noscuntur a sociis*. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general."

Though the legislature has in the definition of "industry" used the words business, trade, undertaking, manufacture or calling, it has not included the word "profession." The word "calling" takes colour from the other words mentioned in S. 2(j) of the Act and cannot, in my opinion, include in this context the learned professions of law and medicine. When the legislature wants to include profession also in such context, the word "profession" is specifically mentioned and two such instances with which we are familiar can at once be recalled. In the Bombay Shops and Establishments Act, 1948, in the definition of commercial establishment the words used are "commercial establishment" means an establishment which carries on any business, trade or profession ... The other instance is of Art. 276 of the Constitution which restricts the power of the legislature of a State to impose taxes in respect of "professions, trades, callings or employments." If the word "callings" always includes "professions," the word "professions" would be a surplusage.

5. Some reliance was placed on the words in the definition of industry, "and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen." I do not think these words would extend the definition of industry to typists, clerks, etc., engaged by a solicitor. "Workman" is defined in S. 2(s) to mean "any person employed in any industry ..." If there is an industry all avocations of workmen employed in it would come within the definition.

6. For the foregoing reasons I am of the opinion that the word "industry" does

not include the learned professions of medicine and law, so if a person practises as a barrister or as a solicitor or as a doctor he is not carrying on an industry. As has been observed by their lordships of the Supreme Court in the case of the Barsi Light Railway Company, Ltd., and another v. Joglekar K. N. and others 1957 I L.L.J. 243 :

"It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended."

In the present case there are no such compelling words to show that the legislature intended to include in the word "industry" the learned professions. It would of course be a different matter if a feature of industry is added, i.e., if a lawyer carries on business of publication of law reports or a doctor runs a hospital or nursing home.

7. At the first hearing of this case it was mentioned by Sri Khambatta on behalf of the opponents that the point at issue in this case has been decided by the Calcutta High Court but that copies of the judgment were not available. The parties then agreed that the matter might be fixed for further hearing after the copy of the decision was received. The opponents filed a copy of the judgment in Brij Mohan Bagaria Vs. N.C. Chatterjee and Others, . The question in that case was whether the occupation of a solicitor was an "industry" as defined in the Industrial Disputes Act and Sinha, J., decided that there was neither an industry, nor an industrial dispute, nor can the employees of the solicitor concerned be workmen as defined under the Act. At the further hearing of the case the opponents produced another unreported) [since reported in D.P. Dunderdele and Others Vs. G.P. Mukherjee and Another, decision of the Calcutta High Court, that of Mukharji, J., in D. P. Dunderdale and others v. G. P. Mukherjee and another. That was a case in which the question was whether the firm of Calcutta solicitors called "Sandersons" and "Morgans" was an industry so as to be liable to have their disputes determined by the procedure laid down by the Industrial Disputes Act, and Mukharji, J., held that there was no industry and no industrial dispute within the meaning of the Act. In this case the learned Judge referred to the decisions of Sinha, J., but gave his own reasons for holding that a solicitor's firm was not an industry. Sri Buch has argued that the decision of Sinha, J., should not be relied on as the learned Judge has disagreed with certain observations of the learned Chief Justice of Bombay High Court in the Hospital Mazdoor Sabha case 1957 I L.L.J. 55 referred to above. Now it is true that this Court is bound by a decision of the Bombay High Court but, as I have pointed out above, the Hospital Mazdoor Sabha case cannot be considered as an authority for the proposition that a solicitor's profession or a solicitor's firm is an "industry" within the meaning of the Act. Moreover, the line of reasoning by which I have arrived at the conclusion that the solicitor's profession or a solicitor's firm is not an "industry" is different, in the main, from the reasoning in the two Calcutta

cases.

8. After the opponent had produced a copy of the judgment of Sinha, J., referred to above an attempt was made to show that the firm of Pereira Fazalbhoy & Co. carried on some business other than that of solicitors and that even if the view is taken that the solicitor's firm is not engaged in an industry, in the particular circumstances of the case, it should be held that as the firm was doing other business it was engaged in an industry. An affidavit has been filed by one of the ex-employees of the firm, viz., Sri K. R. Pillai. To this affidavit a reply has been given by Sri Pereira, one of the partners. Sri Pillai filed a rejoinder to this reply and to this rejoinder Sri Pereira has filed a sub-rejoinder. The affidavit filed b. Sri Pillai is a very lengthy one in which quotations have been given from Cordery's Law of Solicitors to support the argument that the profession of a solicitor is a "business." I have already dealt at some length with the question whether the profession of a solicitor is an "industry" or not and it is not necessary to refer to the quotations from Cordery. That book is not available in this Court nor was it produce. It is sufficient to say that the fact that solicitors in the course of their work may have to administer estates for their clients does not mean that their work is not that of a solicitor. Some specific facts connected with the firm are stated in the affidavit of Sri Pillai. Four instances of purchases and sales of property from 1933 to 1957 are given. Sri Pereira has in his affidavit in reply to the affidavit stated that the old partnership of Pereira Amin and Fazalbhoy was dissolved on 30 November 1935. After that he and Sri Fazalbhoy carried on practice as solicitor under the firm name of Pereira Fazalbhoy & Co. until this partnership was dissolved on 31 March 1946. From 1 April 1946 Sri Pereira, Sri Fazalbhoy and Sri Desai (opponents in this reference) carried on partnership as solicitors under the firm name and style of Pereira Fazalbhoy & Co. until 15 November 1957 when the said firm was dissolved. So of the four transactions relied on by Sri Pillai, only one, viz., purchase of property at Khar belonging to one Abdul Majid, was made since the present firm came into existence. On this point Sri Pereira has in his affidavit stated that this property was purchased by the firm at an auction sale held by the Sheriff of Bombay in execution of an order for costs obtained by the firm against one Abdul Majid Haji Nizamuddin. This solitary transaction, particularly having regard to the circumstances in which it took place, does not prove that the firm of Pereira Fazalbhoy & Co. was engaged in business of buying and selling property. It is stated also in the affidavit of Sri Pillai that the partnership carried on business in forward transactions in shares and in silver. This has been denied by Sri Pereira, who has stated that there is no entry of any such transactions in the books of accounts of the firm. I believe the statement of Sri Pereira on this point. Reading the affidavits of both the parties I have no doubt that the firm of Pereira Fazalbhoy & Co. were working as solicitors and not engaged in the business of purchase and sale of estates or forward transactions in silver. The partners of the firm have all along been members of the Incorporated Law Society, the membership of which is restricted to persons practising as attorneys of the Bombay High Court. Sri Pereira has in his affidavit

further stated :

"The said partners have always accepted and acted according to the professional rules of conduct of the said society and of the Bombay High Court in relation to their practice and profession."

The allegation that Pereira Fazalbhoj & Co. were carrying on the business referred to above was not made in the statement of claim and is an afterthought; it was only after the argument on the preliminary issue that an affidavit was filed by Sri Pillai to show that the firm was engaged in business other than the practice of solicitors.

9. For the foregoing reasons I have come to the conclusions that neither the profession of a solicitor nor a firm of solicitors is an industry within the meaning of the Industrial Disputes Act, that the opponents were not employers in any "industry" within the meaning of S. 2(j) of the industrial Disputes Act; the reference made to this tribunal is not of an "industrial dispute" within the meaning of the Act, and so could not be referred to this tribunal for adjudication under S. 12(5) of the Industrial Disputes Act. The reference therefore cannot be adjudicated upon and stands disposed of accordingly.