

(2005) 08 KAR CK 0078
In the Karnataka High Court
Case No : W.A. No. 2713 of 2005

Radhakrishna Bhakta

APPELLANT

Vs

Subramanya Shastri and Another

RESPONDENT

Date of Decision : 11-08-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1), 12 (5), 2 (j)

Citation : (2006) 110 FLR 695 : (2005) 4 KCCR 2333

Hon'ble Judges : N.K. Sodhi, C.J;S. Abdul Nazeer, J

Bench : Division Bench

Advocate : P.N. Ramesh, for Bangalore Law Assts, for the Appellant; K. Hanumantharayappa, for the Respondent

Judgement

N.K. Sodhi, C.J.—This writ appeal is directed against the order dated March 3, 2005 passed by the learned single Judge allowing Writ Petition No. 45628/2001 whereby the case has been remitted back to the State Government to reconsider the issue.

2. The appellant before us is Sri Radhakrishna Bhakta Mandali Trust which is administering Radhakrishna temple at Bangalore. Subramanya Shastri respondent No. 1 is the priest engaged in the temple who performs pooja for the devotees who visit the temple. It is alleged that on receipt of several complaints from the devotee the services of the respondent No. 1 were terminated. He sought to raise an industrial dispute. Conciliation proceedings were held which did not fructify. The State Government exercising its powers u/s 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 (for short "the Act") declined to refer the dispute for adjudication observing that the temple run by the trust is not an industry within the meaning of Clause (j) of Section 2 of the Act and therefore the Act was not applicable. This order of the State Government came to be challenged by the respondent No. 1 who claims to be a workman. The writ petition has been allowed by the learned single Judge holding that the State Government while declining the reference could not have adjudicated the

dispute. The order declining the reference has been set aside and the case remitted to the Government for redecision. It is against this order that the present writ appeal has been filed.

3. We have heard learned Counsel for the parties and are of the view that the writ appeal deserves to succeed. Having regard to the definition of "industry" in Clause (j) of Section 2 of the Act we are of the view that any activity which could be described as an industry has to be either trade or business or any other activity analogous thereto. A temple which is visited by the devotees by reason of faith cannot by any process of reasoning be said to be an activity analogous to trade or business. We are of the view that the State Government was right in declining the reference. While doing so it relied upon a judgment of the Kerala High Court in a *A. Kesava Bhatt Vs. Sree Ram Ambalam Trust and Another*, wherein Archak or a priest in a temple was held not to be a "workman" within the meaning of the Act as he cannot be said to be doing any manual or clerical services to the devotees of the temple. The temple was held not to be an industry within the meaning of Clause (j) of Section 2 of the Act. We have carefully gone through this judgment and are in agreement with the reasoning of the learned single Judge.

4. What is contended by learned Counsel for respondent No. 1 is that the State Government while declining to refer the dispute could not have decided the issue as to whether the temple was an industry or not and that it should have been left to the adjudicating authority to pronounce thereon. There is no quarrel with the proposition propounded by the learned Counsel but while exercising powers u/s 10(1) read with Section 12(5) of the Act, the State Government is not precluded from prima facie examining nature of the activity carried on by the so called employer. Reference in this regard can be made to the observations of the Apex Court in *Bombay Union of Journalists and Others Vs. The State of Bombay and Another*, . The State Government cannot blindly refer all disputes for adjudication irrespective of the nature of activity carried on by the so called employer. For instance an employee of a Court who is dismissed from service will not be allowed to raise an industrial dispute. If the argument of the learned Counsel for respondent No. 1 were to be accepted the State Government would be obliged to refer such disputes for adjudication. Several other instances could be given where it may not be proper for the State to refer the dispute. In this view of the matter the order of the learned single Judge allowing the writ petition filed by respondent No. 1 cannot be sustained.

5. In the result, writ appeal is allowed. The order of the learned single Judge set aside and Writ Petition No. 45628/2001 dismissed leaving the parties to bear their costs.