

(1960) 04 BOM CK 0006

In the Bombay High Court

Case No : Special Civil Application No. 861 of 1959

Sirur Municipality

APPELLANT

Vs

Its Workmen

RESPONDENT

Date of Decision : 14-04-1960

Acts Referred:

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

Citation : (1960) 1 FLR 536

Hon'ble Judges : V.S. Desai, J;S.T. Desai, J

Bench : Division Bench

Judgement

V.S. Desai, J.—This is an application under Arts. 226 and 227 of the Constitution of India challenging the award - part I made by opponent 2, as the industrial tribunal of Bombay, in the dispute which was referred to him under S. 10(1)(d) of the Industrial Disputes Act, 1947, between the petitioner, who is the Sirur Municipality (a district municipality functioning under the Bombay District Municipal Act, 1901) and opponent 1 who are its employees represented by the Poona Mazdoor Sabha. The award was submitted by the opponent 2 to the Government on 20 April 1959 and was published in the Bombay Government Gazette, Part I-L, on 21 May 1959.

2. The dispute related to the pay-scales, allowance, leave, etc., of the employees of the petitioner and the categories of employees mentioned in the order of reference were as follows :

- (i) Municipal secretary.
- (ii) All clerks except naka clerk.
- (iii) Municipal fitter.
- (iv) Assistant fitter, lamp-lighter.
- (v) Municipal checker.

- (vi) Naka clerk, sanitary mukadam.
- (vii) Peon, road mazdoor, oilman and rat-destroyer.
- (viii) Sweepers and scavengers.
- (ix) Maid-servant.
- (x) Nurse.

3. Before the tribunal a preliminary objection was raised by the petitioner as to the maintainability of the reference. It was contended that the categories of employees mentioned in the application were not engaged in activities which fell within the definition of "industry" contained in the Industrial Disputes Act, that the Industrial Disputes Act was not applicable to the dispute, that the reference was not valid and that the tribunal had no jurisdiction to entertain the reference. The part I award, which is the subject-matter of the present application, is the decision of opponent 2 on this preliminary objection raised by the petitioner. Opponent 2 has held that the demands of all the categories of employees enumerated in the reference can be dealt with by him and he has, therefore, directed that the matter should be set down for hearing on merits.

4. Although in the objection taken by the petitioner it was contended that none of the categories of the employees was engaged in an activity, which was an industry within the meaning of the Industrial Disputes Act, the petitioner admitted before the tribunal, that the municipal fitter, the assistant fitter and the oilmen would come within the operation of the Industrial Disputes Act. The preliminary objection, however, was pressed with regard to the rest of the categories of employees mentioned in the reference.

5. Following the decision of the Supreme Court in *D. N. Banerji v. P. R. Mukherjee* 1953 I L.L.J. 195 and the decisions of this Court in *Hospital Mazdoor Sabha v. Bombay State* 1957 I L.L.J. 55 and *Nagpur Corporation v. N. H. Mujumdar* 1958 I L.L.J. 761 opponent 2 came to the conclusion that the dispute between the municipality and its employees engaged in activities of the municipality, which fell within the definition of "industry" contained in the Act, would be an industrial dispute, which could be referred to the industrial tribunal under S. 10(1)(d) of the Act and which the industrial tribunal would have jurisdiction to entertain and deal with. He also took the view that in order to determine whether a particular activity of the municipality was an "industry" within the meaning of the Industrial Disputes Act, the test to be applied was whether, if that activity had been undertaken by a private agency, it would have been an "industry" to which the Act applied. On these principles he examined the various activities of the petitioner-municipality and came to the conclusion that all the categories of the employees which were mentioned in the reference with the exception of the municipal checker and the naka clerks who were engaged in the collection of octroi were employees engaged in activities which fell within the definition of "industry" in the Industrial Disputes Act. He further held that although the

municipal checkers and the naka clerks were not engaged in an activity, which was an industry, they, came within the expression "any person" used in S. 2(k) of the Industrial Disputes Act, which defines an industrial dispute and, therefore, the dispute raised with regard to the terms of employment or with the conditions of labour of the municipal checker and the naka clerks by the other employees, who were workmen of the municipality, was an industrial dispute within the meaning of S. 2(k). He has, accordingly, hold that he has jurisdiction to deal with the dispute referred to him in respect of all the categories of workmen who are enumerated in the order of reference.

6. Mr. J. R. Lalit, who appears for the petitioner-municipality, has contended before us that none of the activities of the municipality except that in which the municipal fitter, the assistant fitter and the oilman are engaged, is an activity which could fall within the definition of "Industry" in the Industrial Disputes Act. He has, therefore, contended that the disputes raised by the employees of the municipality except the municipal fitter, the assistant fitter and the oilman, is not an industrial dispute and the reference, therefore, is not competent in respect of all employees excepting the municipal fitter, the assistant fitter and the oilman. He has then contended that at any rate the municipal secretary and the clerks engaged in the administrative departments of the municipality, the peons, the maid-servant and the nurse are not engaged in activities which can come within the definition of "industry" under the Industrial Disputes Act. He has, therefore, contended that all these categories along with the naka clerks and the municipal checkers, who have been held by the tribunal as not engaged in "industry," must at any rate be excluded from the reference on the ground that the dispute on behalf of these categories cannot be an "industrial dispute."

7. The next argument of Mr. J. R. Lalit is that the view taken by the tribunal with regard to the interpretation and scope of S. 2(k) of the Industrial Disputes Act to erroneous and unsustainable and according to him such categories of the municipal employees, whom, he may succeed in showing, as not engaged in activities which fall within the definition of "Industry" under the Act, cannot come within the scope of the expression "any person" used in S. 2(k) of the Industrial Disputes Act.

8. Now, the first of the contentions raised by Mr. Lalit need not detain us very long in view of the decisions, which have been referred to by the tribunal in its award and in view of the two recent judgments of the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, and *The Corporation of the City of Nagpur Vs. Its Employees*, . It may be mentioned that both these recent decisions are in appeals from the decisions of this Court which are relied on by the tribunal in the present case; the former being in appeal from the decision of this Court in *Hospital Mazdoor Sabha v. Bombay State* 1957 I L.L.J. 55 and the latter from the case of *Nagpur Corporation v. N. H. Mujumdar* 1958 I L.L.J. 761

9. In *D. N. Banerji v. P. R. Mukherjee* 1953 I L.L.J. 195 it was held that having

regard to the definitions found in the Act, the aim or object that the legislature had in view and the nature, variety and scope of disputes that occur between employers and employees, the definitions in the Act include also disputes which might arise between the municipalities and their employees in branches of work that can be said to be analogous to the carrying on of a trade or business. The question in that case was whether the conservancy service rendered by a municipality was an "industry" within the meaning of the Industrial Disputes Act and whether the dispute between the municipality and its employees in the conservancy department was an "industrial dispute" within the meaning of the Act. It was held that the dispute was an "industrial dispute" within the meaning of the Industrial Disputes Act.

10. This decision has been subsequently referred to by the Supreme Court in *Baroda Borough Municipality Vs. Its Workmen*, where it has been observed (p. 11) :

"It is now finally settled by the decision of this Court in *D. N. Banerji v. P. R. Mukherjee* 1953 I L.L.J. 195 (supra) 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 S. 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 of a trade or business."

11. It may be mentioned that the undertaking of the municipality with which their lordships were concerned in that case, was an electric supply undertaking carried on by the electricity department of the Baroda Municipality.

12. In the case of *Hospital Mazdoor Sabha v. Bombay State* 1957 I L.L.J. 55 the question before this Court was whether the under-taking of the State of Bombay in running the J.J. Group of Hospitals and employing workmen constituted an "industry" within the meaning of the Industrial Disputes Act. It was held that the undertaking was an industry within the meaning of the Industrial Disputes Act. It was laid down in that case that the test, in order to determine whether a particular activity undertaken by the Government was an "industry," would be to consider whether if that activity had been undertaken by a private agency, would it have been an industry to which the Act applied. If the Act had applied to that activity, it is entirely immaterial whether that activity was undertaken by Government. In this case the Court was considering an activity of the Government and not of a local body or authority like the municipality, but there can be no doubt that the test laid down would equally apply to an activity undertaken by a local authority like the municipality.

13. In *Nagpur Corporation v. N. H. Mujumdar*, 1958 I L.L.J. 761 (supra) the Court had to consider the question whether the activities of the Municipal Corporation of the City of Nagpur were industrial activities or not. The test laid down in the case of *Hospital Mazdoor Sabha v. Bombay State* 1957 I L.L.J. 55 (supra) was

accepted as the correct test in determining that question and the argument that it could not be regarded as the correct test in view of the Supreme Court decision in the case of *D. N. Banerji v. P. R. Mukherjee* 1953 I L.L.J. 195 and the *Baroda Borough Municipality Vs. Its Workmen*, was not accepted.

14. In the case of *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, decided by the Supreme Court which was an appeal from the decision of this Court in the *Hospital Mazdoor Sabha v. Bombay State* 1957 I L.L.J. 55 to which we have already referred, their lordships of the Supreme Court have again dealt with the interpretation of "industry" in S. 2(j) of the Industrial Disputes Act. They have pointed out that the legislature has deliberately used words of wide import and the rule of construction *noscuntur a sociis* can have no application in interpreting the definition prescribed by S. 2(j). Their lordships have, however observed that although the words "calling," "service," and "undertaking" used in S. 2(j) are words of very wide denotation, a line would have to be drawn to exclude some activities from the scope of these terms. They have then considered the question as to where the line should be drawn and what limitations can and should be reasonably applied in the interpretation of the words used in S. 2(j) of the Act.

15. In dealing with this question their lordships have expressed the view that the regal or sovereign functions of the Government which have been pithily described by Lord Watson as "the primary and inalienable functions of a constitutional Government" do not fall within the scope of S. 2(j). All other activities undertaken by the Government which are analogous to trade or business will come within the scope of S. 2(j) even though such activities have been undertaken in the interest of the socio-economic progress of the country in view of the Directive Principles enunciated in Part IV of the Constitution and in view of the ideal of a welfare State which has been placed before the country. Their lordships have also pointed out that two of the important attributes conventionally associated with trade or business, namely, investment of capital and existence of profit motive, are not necessarily predicated in interpreting S. 2(j) and the absence of these two attributes will not be sufficient to render the activity as one not falling within the scope of the term "industry" as defined in S. 2(j). They have also observed that the test of *quid pro quo* is not necessary to be satisfied in order to bring the activity under S. 2(j).

16. Their lordships then have proceeded on to consider the attributes the presence of which would make an activity an undertaking within S. 2(j) on the ground that it is analogous to trade or business, and have observed (pp. 258-259) :

"..... It is difficult to state these possible attributes definitely or exhaustively; as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-

operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organized or arranged in a manner in which trade or business is generally organized or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organized or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which S. 2(j) applies."

17. On this test, which they laid down, their lordships have held that the State was carrying on an undertaking within the meaning of S. 2(j) in running the group of hospitals. The case before their lordships was in respect of an activity undertaken by the Government, but the principles and tests laid down in the case will also undoubtedly apply to the activities of the municipalities.

18. The last case, which is required to be referred to, is the case of The Corporation of the City of Nagpur Vs. Its Employees, . One of the three appeals dealt with in this decision, namely, Appeal No. 144 of 1959, was from the decision of this Court in Nagpur Corporation v. H. H. Mujumdar 1958 I L.L.J. 761. In this case their lordships of the Supreme Court had to consider the question as to which of the activities of the Corporation fell within the definition of S. 2(14) of the Central Provinces and Berar Industrial Disputes Act, 1947. The definition of "industry" in this section was not exactly the same as in S. 2(j) of the Industrial Disputes Act, but their lordships after pointing out the difference, observed that in their view the difference did not justify in taking a different view from that accepted by the Supreme Court in the decisions on the interpretation of S. 2(j) of the Industrial Disputes Act. The decision, therefore, will equally apply to the interpretation of S. 2(j) of the Industrial Disputes Act. this case after an exhaustive discussion their lordships summarized the result as follows :

(1) The definition of "industry" in the Act is very comprehensive. It is in two parts : one part defines it from the stand-point of the employer and the other from the stand-point of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act.

(2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment.

(3) The regal functions described as primary and inalienable functions of State, though statutorily delegated to a corporation, are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power.

(4) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation.

(5) If a service rendered by a corporation is an industry, the employees in the

departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act.

(6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act.

19. Their lordships then proceeded to consider the activities of the Nagpur City Corporation in its 22 different departments. These 22 departments included 5 departments which the tribunal had held as not engaged in industry. Since there was no appeal on behalf of the employees in respect of this part of the decision and award of the tribunal, their lordships did not find it necessary to deal with the question whether the activities of these five departments also fell within the meaning of the term "industry." As to the rest of the departments, their lordships held that their activities were within the meaning of S. 2(14) of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947.

20. In view of the decisions to which we have referred and in view of the six propositions which the Supreme Court has laid down in the case of *The Corporation of the City of Nagpur Vs. Its Employees*, it is impossible for Mr. Lalit to argue that none of the activities of the petitioner-municipality except those in which the municipal fitter, the assistant fitter and the oilman are engaged is an "industry" within the meaning of S. 2(j). Since, however, he has argued that some of the categories of the employees enumerated in the reference must fall outside the scope of the reference by reason of their not being engaged in activities which come within the scope of S. 2(j), we will proceed to deal with that argument.

21. Now, in the present case before us, the order of reference refers to the categories of the municipal employees. In order to consider whether the employees in these categories fall within the definition of "workman" within the meaning of the Industrial Disputes Act, we must consider whether, the activities of the municipality in which these employees are engaged come within the meaning of "industry" under the Industrial Disputes Act. The municipality has admitted that the municipal fitter, the assistant fitter and the oilman are engaged in activities, which are "industrial." The sanitary and conservancy activities in which the sanitary mukadam, the ratdestroyer, sweeper and scavengers are employed, are also activities, which would come within the definition of "industry" in view of the decision already referred to earlier. The lamp-lighter is concerned with the service of lamp-lighting. which also would fall within the definition of industry inasmuch as it could be entrusted to a private individual and if so entrusted, it would be industry in his hands within the meaning of S. 2(j). For the same reason the road mazdoor will also be a person engaged in an "industry." Then remain the municipal secretary, the clerks, the municipal checker, the maid-servant, the nurse and the peons. As to the municipal secretary, the learned tribunal has found that he belongs to the administrative

department of the municipality. His duties are clerical as well as supervisory. Now, the general administration of the Municipal Corporation of Nagpur has been held by the Supreme Court as a part of the industry, since the various departments which are connected with the administrative department, are industries, and the administrative department deals predominantly with the industrial departments, the activity of the administrative department of the petitioner-municipality also will have to be held as "industry" within the meaning of S. 2(j) and in view of the finding of the tribunal with regard to the nature of the work of the secretary, the municipal secretary will also be a workman within the definition of the Industrial Disputes Act.

22. As to the clerks including the municipal checker, it appears that there is a general cadre of clerks in the municipality and these clerks are distributed in the several departments and activities of the municipality including the collection of octroi. Excepting the clerks, who are assigned the work of the collection of octroi and the clerk who is assigned the work of the municipal checker, the rest of the clerks are distributed in the administrative department and other activities such as sanitary, conservancy and the rest. We have seen that the activities of all these other departments are activities in the nature of "industry," and the clerks employed in these activities will be undoubtedly workmen, engaged in industry. As to the naka clerks and the municipal checker, who are employed in the collection of octroi, the tribunal has taken the view that the activity of the municipality in the collection of octroi is not an industrial activity and these employees cannot, therefore, be regarded as workmen engaged in industry. The tribunal has however taken the view that although they are not workmen engaged in industry, the other workmen were entitled to raise a dispute on their behalf as they came within the expression "any persons" in the definition of the expression "industrial dispute" in S. 2(k) of the Industrial Disputes Act. It is on that ground that the tribunal has held that it would have jurisdiction to deal with the dispute in the case of the naka clerks and the municipal checker also. It would have been necessary for us to consider the position of the naka clerks and the municipal checker in view of the principles laid down in the recent decision of the Supreme Court in the case of *The Corporation of the City of Nagpur Vs. Its Employees*, and in case we were to come to the conclusion that the municipal checker and the naka clerks were not engaged in an "industry," it would have been also necessary for us to examine whether the interpretation put on the definition of the expression "industrial dispute" by the tribunal was correct and whether the tribunal was right in its view that the Industrial Disputes Act applied to the naka clerks and the municipal checkers also. On the facts of the present case, however it is not necessary to go into these questions. From the affidavit, which has been filed on behalf of opponent 1 by the President of Poona Mazdoor Sabha and the statements, which are filed along with that affidavit and also from the affidavit filed by the President, Sirur Municipality, it appears that there is not a separate cadre of employees for the octroi department, but there is one cadre of clerks for all the departments and these clerks are freely transferable from one

department to the other. As is seen from the statement, the same clerk has worked in several departments including the octroi department. As we have already pointed out, in the order of reference in the present case, classification is not made on the basis of the activities of the municipality but categories of workmen have been enumerated with reference to the kind of work done by them. Since so far as the engagement of clerks is concerned, the municipality does not regard the octroi department as a separate and distinct activity of the municipality with a cadre of its own and administration confined to that department only, the categories of workers, though designed as naka clerks, are workers, who are engaged in the integral activities of the municipality. They, therefore, cannot be regarded as not engaged in industrial activity because all other activities of the municipality, as we have already pointed out, are without any doubt activities in the nature of industry. In this view it must be held that the naka clerks and the municipal checkers also would come within the category of workers engaged in industry. The peons also like the clerks belong to the integrated activities and are not solely and exclusively confined to any one department for all the time of their service and for the reasons which we have mentioned in connexion with the clerks they also must be regarded as engaged in "industry."

23. That leaves out the case of the maid-servant and the nurse engaged in the municipal dispensary. Mr. J. R. Lalit attempted to argue that the activity in running a municipal dispensary was not an industrial activity because if the said dispensary was worked out by a doctor, it would not be an industry. It is not possible to accept this argument of Mr. Lalit. A doctor practising his own profession and having a dispensary for his purpose may not be engaged in an industrial activity, but if a private individual were to run a dispensary by employing a doctor, the activity of the private person would certainly be an activity which would come within the meaning of the definition of "industry." The activity of the municipality, therefore, in running a dispensary is also an industrial activity and the maid-servant and the nurse engaged therein are also workmen engaged in industry.

24. In the result, therefore, we must hold that the award made by the tribunal in the present case is correct and must be sustained. The special civil application consequently fails and must be dismissed.

25. The rule is discharged with costs.