
(2011) 04 CAL CK 0003
In the Calcutta High Court
Case No : F.M.A. 71 of 2004

Sri Nathji Bhandar and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 2
Nathdwara Temple Act, 1959 — Section 2

Citation : (2011) 2 CHN 874 : (2011) 129 FLR 1086 : (2012) 1 LLJ 410

Hon'ble Judges : Pranab Kumar Chattopadhyay, J; Ashoke Kumar Dasadhikari, J

Bench : Division Bench

Advocate : Arunabha Ghosh, Nilandu Bhattacharyya and Sandip Kr. Dutta, for the Appellant; Amal Baran Chatterjee, Sk. Nizamuddin and Abdul Hadi, Asish Kr. Das, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The famous temple of Lord Srinathji is at Nathdwara in the State of Rajasthan. There is also another temple of Lord Srinathji at Kolkata. The Nathdwara Temple Board, constituted under the Nathdwara Temple Act, 1959, runs the administration of Srinathji Temple at Nathdwara. Sriathji Temple at Kolkata is managed by Srinathji Bhandar, namely, the Appellant No. 1 herein. The workmen represented by Srinathji Bhandar Employees' Union raised a demand for enhancement of the salary and ultimately, the dispute raised by the said Union was referred by the Government of West Bengal to the 8th Industrial Tribunal by the Order of Reference dated 24th May, 2000 for adjudication of the following issues:

1. Whether the demand for increase in salary of the workmen is justified.
2. What relief, if any, are the workmen entitled to?
2. The learned Judge of the Tribunal adjudicated the aforesaid issues and passed an award on 7th August, 2002 upon holding that the demand for increase in

salary of the workmen represented by the Srinathji Bhandar Employees" Union is justified and directed the management of Srinathji Bhandar Calcutta to pay increment to the workmen represented by the said Union @ 10% per annum of their salary with effect from January 1995.

3. The relevant extracts from the aforesaid award passed by the learned 8th Industrial Tribunal are set out hereunder:

Therefore, considering the facts and circumstances of the case and material on records, I hold that payment for increase in salary to the workmen of Sri Nathji Bhandar, Calcutta is justified. The company, i.e. management of Sri Nathji Bhandar, Calcutta is hereby directed to pay increment to the workmen of the Temple @ 10% per annum of their salary with effect from January, 1995.

This is my award on contest. The instant reference is thus disposed of.

4. The Appellants herein challenged the validity and/or legality of the said award passed by the aforesaid Tribunal by filing a writ petition and prayed for setting aside the award passed by the learned Tribunal.

5. The learned Single Judge, however, refused to interfere with the said award passed by the learned Tribunal and dismissed the writ petition by the judgment and order dated 22nd September, 2003.

6. Assailing the aforesaid judgment and order passed by the learned Single Judge, instant appeal has been filed by the Appellants. It has been urged on behalf of the Appellants that the award passed by the learned Tribunal cannot be sustained in the eye of law in view of the erroneous findings of the learned Tribunal.

7. Mr. Arunabha Ghosh, learned Counsel representing the Appellants submitted that the Respondent Union had no occasion to demand the increment of salary in respect of the workmen who were not appointed by the Appellant No. 1.

8. Mr. Ghosh further submitted that the Appellant No. 1 is not at all an industry and the persons represented by the Respondent No. 3 are performing the day to day Seva Puja of the deity Lord Srinathji without receiving any salary and therefore, those people cannot be treated as workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

9. The learned Counsel of the Appellants submitted that the Order of Reference issued by the Labour Department, Government of West Bengal dated 24th May, 2000 cannot be sustained in the eye of law as there was no existence of any industrial dispute between the Appellant No. 1 and Srinathji Bhandar Employees" Union. Referring to the various findings and observations of the learned Tribunal and also of the learned Single Judge Mr. Ghosh submitted that the Appellant No. 1 herein never appointed the employees represented by the Respondent Union and, therefore, the Respondent Union had no occasion to raise an industrial dispute against the Appellant No. 1 which could be referred to the Industrial

Tribunal for adjudication.

10. Mr. Ghosh categorically submitted that there being no employer-employee relationship between the Appellant No. 1 and the persons represented by the Respondent Union the impugned Order of Reference issued by the Labour Department, Government of West Bengal and the subsequent award passed by the learned Tribunal as well as the judgment and order passed by the learned Single Judge cannot be sustained at all in the eye of law.

11. Mr. Ghosh also submitted that the learned Tribunal as well as the learned Single Judge failed to appreciate that the Appellant No. 1 herein, not being the appointing authority, cannot have any right, authority and/or jurisdiction to entertain the demand for increase in salary in respect of the persons represented by the Respondent Union.

12. The Respondent Union on the other hand submitted that the Appellant No. 1 herein is administered by the Nathdwara Temple Board, constituted under the Nathdwara Temple Act, 1959. It has also been submitted on behalf of the Respondent Union that the Appellant No. 1 is a branch office of the said Board.

13. Mr. Amal Baran Chatterjee, the learned Counsel representing the Respondent Union submitted that the writ petition filed by the Appellants herein are not at all maintainable on the following grounds:

i) The award is neither perverse nor dehors the fact.

ii) The Appellants did not challenge the Order of Reference issued by the Labour Department, Government of West Bengal dated 24th May, 2000 and submitted to the jurisdiction and participated in the proceedings before the learned Tribunal.

iii) The management had allowed 30% increase of the benefits in the year 1990 and therefore, the award conferring 10% increase of benefits with effect from January 1995, cannot be challenged.

14. According to Mr. Chatterjee, the Appellant No. 1 herein is under the control and management of the Nathdwara Temple Board and the Manager of the said Appellant No. 1 being an employee of the Board contested before the learned Tribunal.

15. Mr. Chatterjee, however, submitted that although the Temple Board is not a party to the Order of Reference, the issue relating to the Non-Joinder of the said Temple Board as a party to the Order of Reference cannot be raised for the first time in the present appeal.

16. Mr. Chatterjee referred to and relied on a decision of the Andhra Pradesh High Court in the case of Addepalli Venkata Laxmi Vs. Ayinampudi Narasimha Rao and others, On examination of the written statement filed on behalf of the Respondent Union before the learned Tribunal and scrutinizing the evidence on record available before the said learned Tribunal and also going through the impugned award passed by the learned Tribunal, we find that the Respondent

Union as well as the learned Judge of the 8th Industrial Tribunal were totally confused about the status of the Appellant No. 1 and the workmen represented by the Respondent Union.

17. In the written statement filed on behalf of the workmen represented by the Respondent Union specifically stated that the Appellant No. 1 herein is a branch office of the Nathdwara Temple Board at Nathdwara. Paragraph one of the aforesaid written statement filed by the Respondent Union before the learned Board at Nathdwara. Paragraph one of the aforesaid written statement filed by the respondent Union before the learned Tribunal is set out hereunder:

1. That the Management "SHRI NATHJI BHANDAR" situated in Calcutta (having One Temple one rented building a garden & having sufficient jewelleries and cash) is a branch office of the Organization hereinafter referred to as the NATHDWARA TEMPLE BOARD situated at Nathdwara in the District of Udaipur in the State of Rajasthan.

18. In Paragraphs 23 and 31 of the said written statement it has been, however, submitted on behalf of the Respondent Union that the Appellant No. 1 is not included in temple of Rajasthan as per the Nathdwara Temple Act, 1959 and Rules, 1963. The said paragraphs 23 & 31 are set out hereunder:

23. With reference to the Statement made in paragraph 21 of the Written Statement are not admitted. It is stated that the Temple Board every year gives 10% increments and the same are being accepted by the Sevawalas but in warrant to any agreement.

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31. With reference to the Statements made in paragraph 31 of the Written Statement are strongly denied. It is purely religious organisation and its activities are purely religious not commercial.

19. Respondent union took a contradictory stand in paragraph 32 of the said written statement which is set out hereunder:

32. That Sri Nathji Bhandar Calcutta, though is governed and controlled by the said Act and Rules, but in fact it does not come under the purview of the said Act as per definition in the act itself and also because of the fact that this temple came into existence on 8.7.1960 after the act was framed and invoked by the State Government of Rajasthan.

20. Mr. Amal Baran Chatterjee representing the Respondent Union relied on the evidence adduced by the witness Shri Bal Krishna Tripathi (O.P.W.2) before the learned Tribunal wherein the said witness admitted that the Calcutta Temple is one of the temples under the company. The relevant extracts from the evidence of Bal Krishna Tripathi are set out hereunder:

O.P.W.2 - Shri Bal Krishna Tripathi on S.A. on 6.02.2002.

I am attached to the company as manager to look after all the Dharmasalas under the management of Nathdwara Temple Board. At present, I am posted at nathdwara. The Calcutta Temple is one of the temples under the company.

21. Therefore, the Respondent Union is not sure whether the Appellant No. 1 is under the management of the Nathdwara Temple Board being one of the temples under the Nathdwara Temple Act, 1959.

22. The learned Tribunal in the impugned award also made contradictory observations and findings. The learned Tribunal observed that the Appellant No. 1 has a third category of employees who are neither salaried employees nor non-salaried employees but they are responsible to Chief Executive Officer. The said Chief Executive Officer is undisputedly appointed by the Government of Rajasthan who is responsible for the custody of all the records and preservation of the properties of the temple mentioned in the Nathdwara Temple Act, 1959. The said Chief Executive Officer is a whole time officer of the temple and subject to the control of the Board, has general power to carry out the provisions of the Nathdwara Temple Act, 1959.

23. To provide better administration and governance of the temple of Srinathji the aforesaid Nathdwara Temple Act 1959 was enacted which received the assent of the President of India on the 28th day of March, 1959. The temple has been specifically defined in the said Act as hereunder:

Section 2(viii) "temple" means the temple of Shri Shrinathji at Nathdwara in Udaipur District and includes the temple of Shri Navnit Priyaji and Shri Madan Mohanlalji together with all additions thereto of all alterations thereof which may be made from time to time after the commencement of this Act.

24. The said Srinathji Temple at Calcutta managed by the Appellant No. 1 cannot be regarded as temple as defined in Section 2(viii) of the Nathdwara Temple Act, 1959.

25. The learned Judge of the Tribunal also specifically admitted the aforesaid fact in the impugned award as hereunder:

Sri Nathji Bhandar at Calcutta is not included in Temple of Nathdwara as per Act and Rules and is purely of Commercial in nature as also held by the Gratuity Commissioner, Govt. of West Bengal in Worker Govind Lal Upadhyay's Award in the year 1991. This temple came into existence on 8.07.60 after the Act was framed.

26. While recording the decision in the award learned Tribunal observed as hereunder:

... I have gone through the Act, but failed to find the existence of Sri Nathji Bhandar, Calcutta in this Act. According to Section 2(viii), a "Temple" means the temple of Shri Sri Nathji at Nathdwara, the temple of Shri Navnit Priyaji and Shri Madan Mohanlalji. There is no existence of Sri Nathji Bhandar in this Act.

27. On examination of the evidence on record the learned Tribunal found that the employees representing Respondent Union were appointed by the Chief Executive Officer as per provisions of the Nathdwara Temple Act, 1959. The aforesaid findings of the learned Tribunal have been specifically recorded in the impugned award as hereunder:

In the present case the Union has examined three members of the Union as P.W.1, 2 and 3. They have stated that they are paid employees of the temple. They were appointed by Chief Executive Officer as per provision of the said Act.

28. Therefore, the learned Tribunal arrived at the clear finding that the employees represented by the Respondent Union were appointed by the Chief Executive Officer in terms of the provisions of the Nathdwara Temple Act, 1959 and not by the Appellant No. 1 herein. In the aforesaid circumstances, the Appellant No. 1 could not have taken any decision with regard to the demand for increase in salary of the workmen represented by the Respondent Union.

29. The learned Tribunal, even after arriving at the specific finding that the Chief Executive Officer appointed under the Nathdwara Act, 1959, was the appointing authority of the employees represented by the Respondent Union, directed the management of the Appellant No. 1 to pay increment @ 10% per annum.

30. The learned Tribunal unfortunately, did not appreciate that the demand for increase in salary of the workmen represented by the Respondent Union cannot be entertained by the Appellant No. 1 herein since such demand can be considered and fulfilled by the appointing authority namely, the Chief Executive Officer appointed by the Nathdwara Temple Act, 1959 or its duly authorised representative.

31. In the present case, therefore, there was no scope of employer-employee relationship between the Appellant No. 1 and the workmen represented by the Respondent Union since, the workmen represented by the Respondent Union were admittedly appointed by the Chief Executive Officer under the Nathdwara Temple Act, 1959 and not by the Appellant No. 1 herein. The Order of Reference issued by the Labour Department, Government of West Bengal dated 24th May, 2000 cannot be sustained since no industrial dispute could exist between the Appellant No. 1 and the workmen represented by the Respondent Union in absence of employer-employee relationship. The Appellant No. 1, not being the appointing authority, had no jurisdiction and/or authority and/or responsibility to consider the demand for increase in salary of the workmen represented by the Respondent Union. The Appellant No. 1, therefore, could not be asked to meet the demand for increase in salary of the workmen appointed by a third party namely, the Chief Executive Officer.

32. It is not correct that the Appellants herein did not challenge the Order of Reference issued by the Labour Department, Government of West Bengal dated 24th May, 2000 made before the learned Tribunal. The legality and/or validity of the said Order of Reference was challenged by the Appellants herein before the

learned Tribunal since no industrial dispute could exist between the Appellant No. 1 and the workmen represented by the Respondent Union in absence of the employer-employee relationship. The Appellant No. 1 herein was not authorised or competent to meet the demand for increase in salary of the workmen represented by the Respondent Union as the said Appellant No. 1 neither appointed the workmen represented by the Respondent union nor was in any way responsible for making payment of their salary.

33. Mr. Amal Baran Chatterjee, learned Counsel of the Respondent Union submitted that the management had allowed 30% increase of benefits in 1990. Mr. Chatterjee however, failed to appreciate that the learned Tribunal specifically held that the settlement on earlier occasion took place between the Respondent Union and the Nathdwara Temple and not with the Appellant No. 1 herein. The relevant extracts from the impugned award passed by the learned Tribunal are set out hereunder:

Ext. 1 goes to show that a Settlement took place in between the present Union and Nathdwara Temple.... Ext. 11 is also a Memorandum of Settlement held between the Union and the management of Nathdwara Temple.

34. The Assistant Labour Commissioner, West Bengal in course of conciliation proceedings also made correspondences with the Chief Executive Officer, Nathdwara in order to resolve the disputes arising out of the demand for increase in salary of the workmen represented by the Respondent Union. The aforesaid fact was also recorded by the learned Tribunal in the impugned award as hereunder:

It appears from a letter issued by Sri. S.K. Mukherjee, Asstt. Labour Commissioner, West Bengal to the Chief Executive Officer, Nathdwara Temple that conciliation was held before him, wherein the representative of the Union appeared, who stated that there was no wages increase for the last 4/5 years.

35. Most unfortunately in the Order of Reference dated 24th May, 2000 the competent authority of the Government of West Bengal held that an industrial dispute was existing between the Appellant No. 1 and the workmen represented by Respondent Union ignoring the fact that the said workmen were appointed by the Chief Executive Officer, Nathdwara Temple and not by the Appellant No. 1 herein and the said Appellant No. 1 therefore, could not be regarded as employer of the workmen represented by the Respondent Union.

36. The learned Tribunal had no occasion to pass an award against the Appellant No. 1 herein even after holding that the Chief Executive Officer appointed the workmen represented by the Respondent Union as per provisions of the Nathdwara Temple Act, 1959 and on the earlier occasion the settlement took place between the Union and the Nathdwara Temple.

37. In the aforesaid circumstances, we hold that the learned Tribunal passed the award contrary to its specific findings and, therefore, the said award cannot be

sustained and accordingly quashed.

38. The learned Single Judge, however, failed to appreciate the aforesaid serious illegalities and/or irregularities and/or errors committed by the learned Tribunal and refused to interfere with the award passed by the learned Tribunal.

39. The learned Single Judge specifically held that the Appellant No. 1 herein cannot be held to be a temple for the sake of Industrial Disputes Act, 1947. The relevant extracts from the aforesaid judgment and order under appeal passed by the learned Single Judge are set out hereunder:

In the present case, the specific Act and Rules do not say that Sri Nathji Bhandar of Calcutta is a temple as per Section 2(viii) of the Act. The persons concerned are not directly involved with such type of religious and spiritual activities of the idol situate at Sri Nathji Temple at Nathdwara District. Udaipur, Rajasthan. Hence, my considered view is that Sri Nathji Bhandar, Calcutta cannot be held to be a temple for the sake of Industrial Disputes Act, 1947.

40. The learned Tribunal also held that a third category employees are employed in the establishment of the Appellant No. 1. The learned Single Judge, however, held that those employees are responsible to the Chief Executive Officer in the matters relating to appointments, transfers, dismissals and payments, etc. The relevant extracts from the judgment and order under appeal passed by the learned Single Judge are set out hereunder:

Therefore, in Sri Nathji Bhandar, Calcutta there is a third category of employees. However, they are responsible to the Chief Executive Officer as to the appointments, transfers, dismissals and payments etc.

41. The learned Single Judge should not have affirmed the award passed by the learned Tribunal even after holding that the Chief Executive Officer, Nathdwara Temple was responsible for appointments, transfers, dismissals and payments of the employees.

42. The Appellant No. 1 herein, since, could not be held responsible for the payments of the employees represented by the Respondent Union, no direction could be issued on the said Appellant No. 1 for increasing the salary of the said employees. The learned Single Judge in one hand held that the Chief Executive Officer, Nathdwara Temple was responsible for making payments to the employees represented by the Respondent Union and on the other hand refused to interfere with the award whereby the Appellant No. 1 was directed to pay increment to the workmen represented by the Respondent Union.

43. The learned Single Judge also committed a serious error in law upon holding that the whole organization of the Appellant No. 1 at Calcutta is covered and controlled by the Nathdwara Temple Act, 1959 and the Rules framed thereunder overlooking the evidence on record, written statement of the Respondent Union and the specific findings of the learned Tribunal.

44. The demand for increase in salary of the concerned employees can be only considered and decided by the appointing authority or any other person duly authorised by the said appointing authority. The learned Tribunal and subsequently the learned Single Judge upon considering the materials on record accepted that the employees represented by the Respondent Union were appointed by the Chief Executive Officer, Nathdwara Temple. Therefore, the dispute relating to wage increase in respect of the employees represented by the Respondent Union should exist between the employer, namely, the Nathdwara Temple Organisation and the Respondent Union. The Appellant No. 1 herein was not the employer in respect of the employees represented by the Respondent Union and therefore, in absence of employer-employee relationship no industrial dispute could exist as mentioned in the Order of Reference dated 24th May, 2000 between the Appellant No. 1 herein and the workmen represented by the Respondent Union.

45. In view of the above, there being no employer-employee relationship between the Appellant No. 1 and the workmen represented by the Respondent Union, no Reference could be made for adjudication before the learned Tribunal under the Industrial Disputes Act, 1947 and in doing so the competent authority of the Government of West Bengal acted illegally which cannot be approved by us.

46. For the reasons discussed hereinabove, the order of reference dated 24th May, 2000 issued by the Labour Department, Government of West Bengal, the subsequent award passed by the learned Tribunal on 7th August, 2002 and the impugned judgment and order under appeal passed by the learned Single Judge on 22nd September, 2003 cannot be sustained.

47. Accordingly, the order of reference dated 24th May, 2000 stands quashed and the award passed by the learned Tribunal on 7th August, 2002 as well as the impugned judgment and order under appeal dated 22nd September, 2003 passed by the learned Single Judge are set aside.

48. This appeal, therefore, stands allowed.

49. In the facts and circumstances of the present case, there will be, however, no order as to costs.

50. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.