
(1996) 12 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 4847 of 1992

Superintendent, Live Stock and Breeding Farm	APPELLANT
Vs	
Prahallad Barik and Another	RESPONDENT

Date of Decision : 09-12-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1997) 3 LLJ 872 : (1997) 1 OLR 192

Hon'ble Judges : P.C. Naik, J;A. Pasayat, J

Bench : Division Bench

Advocate : Additional Government Advocate, for the Appellant; S.B. Das, R.N. Acharya and P.C. Das, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—The Superintendent of L.B.D. Farm, Cuttack calls in question legality of award by the Presiding Officer, Labour Court, Orissa, Bhubaneswar (in short, the "Labour Court") in I.O. Case No. 103 of 1990 holding that the Live Stock and Breeding Farm (in short, "the farm"), unit of Veterinary Department of the State, is an industry as defined in the Industrial Disputes Act, 1947 (in short, the Act").

2. Factual position is almost undisputed, Service of Prahallad Barik (hereinafter referred to as "the employee") were terminated by the management of the farm (referred hereinafter as) "management" with effect from December 24, 1983. A reference was made by the Government of Orissa in the Labour and Employment Department on the basis of a complaint lodged by the employee and following reference was made to the Labour Court for adjudication :

"...Whether the termination of services of Sri Prahallad Barik by the management of Live Stock and Breeding Farm, Cuttack with effect from December 24, 1983 is legal and/or justified ? If not, to what relief is Sri Barik entitled ?"

Management took a stand that establishment in which the employee was working

is not an industry and therefore, the Act had no application. Reliance was placed on a decision of this Court in OJC No. 3203 of 1990 decided on February 7, 1991 wherein it was observed that Veterinary Department of the State is not an industry. Said decision was distinguished by the Labour Court holding that in the said case, the labourers were appointed on contract basis for 5 years by the Government, and the Veterinary Department at Phulbani had no milk or manure business like that of the establishment in the present case. Therefore, the farm was an industry, and the employee was workman attracting application of the Act.

3. Petitioner has urged that Veterinary Department being not an industry, and alleged activities of the farm being not commercial in nature, decision of the Labour Court is indefensible.

Stand of the employee on the other hand is that though the Veterinary Department may not be considered as an industry as defined u/s 2(j) of the Act, yet the activities of the farm were commercial in nature, and it had nothing to do with the sovereign function of the Government, and since the activities of the unit were clearly linked with business or trade, it is an industry.

4. It is accepted by the learned counsel for parties that in case it is held that the farm is not an industry, reference has to be declared incompetent. For resolution of the controversy it is necessary to take note of Section 2(j) which is the pivotal provision and reads as follows :

"(j) "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."

There was no definition of "industry" in the Trade Disputes Act, 1929, the forerunner of the present Act. Though an elaborate amendment has been made to the provision of Industrial Disputes (Amendment) Act, 1982, the same, i.e., Section 2(c) has not yet been given effect. The existing provision has undergone variegated judicial interpretations. The definition is based on the Australian Statute, i.e., Section 4 of the Commonwealth Conciliation and Arbitration Act, 1904. However, in using Australian cases with a text book approach is perhaps not noticed, as in a great body of those cases the problem was presented in its many facets and the approach was pragmatic.

A definition is ordinarily the crystallisation of legal concept promoting precision and rounding of blurred edges, but the definition in Section 2(j) viewed in retrospect has achieved the opposite as was observed by the Apex Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . The definition of "industry" as given in the statute is both exhaustive and inclusive and is ambivalently comprehensive in scope. It is in two parts. The first part says that it "means any business, trade undertaking, manufacture or calling of employers" and then goes on to say that it "includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen". Thus one part defines it from the stand-point of the employer; the other from the

stand-point of the employees. The first part of the definition gives the statutory meaning of industry, whereas the second part deliberately refers to several other items of industry and brings them in the definition in an inclusive way. The first part of the definition determines an industry by reference to occupation of employers in respect of certain activities. The activities are specified by five words, namely, "business", "trade", "undertaking", "manufacture" or "calling". These words determine what an industry is and what the cognate expression "industrial" is intended to convey. This is the significance or connotation of the term or what the word denotes.

5. "Business" is a word of wide import. This expression is wider than the term "trade" and is not synonymous with it and means practically "anything which is not occupation as distinguished from pleasure". "Trade" is not only in the etymological or dictionary sense, but in legal usage, a term of widest scope, it may mean the occupation of a smaller shop-keeper equally with that of a commercial magnate and may also mean a skilled craft, as was observed by Lord Wright in *National Association of Local Government Officers v. Balton Corporation* : 1943 AC 166 (House of Lords). The word "trade" in its primary meaning is "exchange of goods for money" and in its secondary meaning it is "any business carried on with a view to profiting whether manual or mercantile, as distinguished from the liberal arts or learned professions or from agriculture. The occupation of man in buying and selling, barter or commerce is generally considered, as "trade". Occasionally the work especially skilled work is also considered as a "trade". But in the other sense "trade" would include only persons in a line of business in which persons are employed as workmen. But the word as used in the statute must be distinguished from professions although even professions have trade unions. Though "trade" is often used in contrast with "profession", a professional worker would not ordinarily be called a tradesman, but the word "trade" is used in the widest application to the appellation trade unions". But an activity whether it is "trade" or "business" will be an "industry" because both have been included in the definition of industry. The word "undertaking" is the most elastic of all used in the definition. According to Webster's Dictionary "undertaking" means "anything undertaken or any business, work or project which one engages in or attempts as an enterprise. The word "undertaking" in the context of the definition has been understood to mean "any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade". To be analogous is to resemble in functions relevant to the subject, as between like features of two apparently different things. So some kinship through resemblance to trade or business is the key to the problem. Partial similarity postulates selectivity of characteristics for comparability. Manufacture is a kind of productive activity in which the making of article or materials (often on a large scale) is by physical labour or mechanical power. The word "calling" is again a very wide word and it means one's usual occupation, avocation, business or trade. It denotes the following of a profession or a trade. As industry is a continuity, is an organised activity, is a purposeful

pursuit-not any isolated adventure, desultory excursion or casual, fleeting engagement motivelessly undertaken. Such is the common feature of a trade, business, calling, manufacture, service, employment industrial occupation or avocation. The word "undertaking" cannot be torn off the words whose company it keeps.

6. In an Australian case, Issacs, J. speaking for the High Court of Appeal, it was picturesquely illustrated by the learned Judge to define "industry" to mean a business (as merchant), a trade (as cutler), a manufacturer (as a flour miller), undertaking (as a gas company) a calling (as an engineer), or service (as a carrier), or an employment (a general term like "calling"-embracing some or the others, and intended to extend to vocations which might not be comprised in any of the rest), all of these expressions so far indicating the occupation in which the principal is engaged whether on land or water, and then concluded that if the occupation so described is one in which persons are employed for pay, hire, advantage, or reward, that is, as employees, then, with the exceptions stated it is an industry within the meaning of the Act.

7. In Bangalore Water Supply's case (supra), Apex Court summarised the criteria for determining an activity as "Industry" as under:

(a) Where (i) systematic activity, (ii) is organised by co-operation between employer and employee, (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes prima facie, there is an "Industry" in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and decisive test in the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

8. Determination of a dispute as to whether the employee is a workman would largely depend on the factual backdrop. Unfortunately the Labour Court did not bring on record materials on the factual issues. A casual sale of milk cannot be termed to be a continued activity to bring in concept of business. What was primary function of the unit has not been highlighted. There was dispute as to whether there was any commercial activity. No attempt was made by the Labour Court to analyse the factual position. It adopted a short-cut by distinguishing the factual position as highlighted by this Court in OJC No. 3203 of 1990. A bare look at the factual position shows that there was practically no point of factual distinction so far as employees involved in OJC No. 3203 of 1990, and the present case are concerned. It has to be noted that employee accepted

Veterinary Department not to be an industry, but has tried to bring in a distinction between the particular unit and the Department. Further, materials on record show that cross-breed, bull calves were supplied free of costs to Utkal Gomangal Samiti. It would, therefore, be appropriate if the Labour Court makes fresh adjudication of the matter keeping in view position of law elaborated above, and for that purpose the parties shall be permitted to lead further evidence.

This writ application is allowed, the award of the Labour Court is set aside and the matter is remitted back to it for fresh adjudication. No cost.