
(2008) 08 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 3289 of 1999

The Central Cattle Breeding Farm	Vs	APPELLANT
The Presiding Officer and Others		RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 20, 25F, 25N

Citation : (2008) 08 OHC CK 0001

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Advocate : R.B. Mohapatra, S.D. Routray, S. Debata and S. Samantray, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Parija, J.—The Central Cattle Breeding Farm, a part of the Department of Animal Husbandry of the Government of India in the Ministry of Agriculture has filed this writ application challenging the award dated 01.07.1998 passed by the Presiding Officer, Industrial Tribunal, Rourkela, in I.D. Case No. 6 of 1997(C), holding the Petitioner to be an "industry" and accordingly adjudicating the dispute referred to it on merit.

2. The sole contention of Shri P.C. Biswal, learned Central Government counsel appearing for the Petitioner is that the objective of the Central Cattle Breeding Farm is for establishment of cattle breeding farms in different states and union territories of India for welfare and development of indigenous breed of Red Sindhi cattle by scientific research activities and not for profit. Such activities would come under the Sovereign functions of the State and therefore it is not an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act (I.D. Act for short). It is submitted that the aim and objectives of the Central Cattle Breeding Farm are as follows:

(i) Progressive genetic improvement of the hard for milk production by scientific

selection & mating systems.

(ii) testing of bulls to make available proven sires & their use in the cattle development programmes.

(iii) Production & distribution of superior bulls for breeding at the Key Village Block, ICD Projects. A.I centres etc & other Cattle Development Projects in the country;

(iv) production & storage of semen through the technique of deep freezing & its distribution to various state governments, Union Territories and Ors. engaged in cattle development work for rapid milk production enhancement;

(v) to preserve superior germ-plasm of indigenous breeds of national importance so as to make it available for cattle breeding projects;

(vi) demonstration of scientific breeding & farm management practices to both technical personnel & extension workers and Ors. engaged in cattle development work;

(vii) production and supply of seeds, planting material of high yielding varieties of fodder crops in area around the farm; and

(viii) to provide a data base for important buffalo and exotic/indigenous cattle breeds to various State Governments/ - Institutions and reproduction, management systems, adoptability, etc.

3. Accordingly it is submitted that the Central Cattle Breeding Farm established one of its branches at Chiplima, in the district of Sambalpur in Orissa, for rearing high pedigree bulls and cows of Red Sindhi breed, which is essentially a Research Institute and is not a industry and as such the Industrial Tribunal had no jurisdiction to adjudicate the dispute.

4. The brief facts of the case is that the present opposite parties 2 and 3 along with another workman raised industrial dispute, which was taken up for conciliation and the same having ended in failure, the appropriate Government referred the dispute to the Industrial Tribunal, Rourkela, for adjudication. The terms of the dispute were as follows:

Whether the action of the management of Central Cattle Breeding Farm, Chiplima, PO: Basantpur, Dist: Sambalpur, Orissa in terminating the services of Shri Nanda Barik, Shri Nila Nag & Shri Mahendra Tandi w.e.f. 24.4.87, 1.11.88 & 1.11.88 respectively is justified? If not, to what relief the workmen are entitled to ?

5. The case of the workmen before the learned Tribunal was that Shri Nanda Barik was first recruited as motor vehicle cleaner vide order dated 30.03.1985 for a period of -two months. After expiry of two months, he was allowed to continue as such with intermittent breaks till August 1986. Thereafter he was engaged as a cattle attendant on 25.08.0986 and continued as such till he was

retrenched from service on 24.04.1987. He was again engaged on 09.07.1988 and was retrenched from service 30.11.1988. Nila Nag was recruited as a unskilled worker in 1980 in the Agricultural section of the Petitioner establishment. He was retrenched and re-engaged on several occasions. Thereafter he was transferred from Agriculture section to the Veterinary section of the establishment in December, 1986, where he worked up-to 31.08.1987 and was retrenched with effect from 01.09.1987. He was reengaged on 1.4.1988 and again retrenched on 01.11.1988. Mahendra Tandi was recruited as calf boy attendant on 22.5.1987 and was retrenched on, 01.11.1987. He was re-engaged on 01.04.1988 and retrenched on 01.11.1988. He was re-engaged on 16.02.1989 and his services were terminated after few months.

6. The case of the workmen before the learned Tribunal was that they were retrenched without complying with the provisions of Section 25-N of the I.D. Act and without paying any retrenchment compensation. It was their further case that they were retrenched while some of their juniors were allowed to continued in service. As each of the workmen had worked continuously for 240 days, their services cannot be terminated without complying the provisions of Section 25-N of the I.D. Act. It was their further case that they cannot be treated as casual workers since they were doing the same work as regular workers and hence the period of break in their service, to be treated as on duty and they be reinstated in service with full consequential benefits.

7. The main plea of the management before the learned Tribunal was that the Central Cattle Breeding Farm established one of its branches at Chip lima in the district of Sambalpur in Orissa, for rearing high pedigree bulls and cows of Red Sindhi breed, which is essentially a Research Institute and not an "industry" and as such the Tribunal has no jurisdiction to adjudicate the dispute. It was also pleaded by the management before the learned Tribunal that the three workmen were not employed against the sanctioned posts and that they were engaged as semi-skilled or unskilled casual labourers on daily wage basis. It was the specific case of the management that the workmen left their service voluntarily to do better jobs like tailoring, machinery work etc. and their services were not terminated by the management and therefore the question of following the provisions of Section 25-N or 25-F of the I.D. Act and paying them retrenchment compensation does not arise.

8. Learned Tribunal on consideration of the activities of the Petitioner's establishment on the basis of materials on record, including the documentary and oral evidence adduced by the parties, came to find that the management sells milk and improved variety of Red Sindhi cows and bulls. The Tribunal further found from Exts.2 & 3 that the management applied the Model Standing Orders applicable to all industries, against the workers of the Petitioner's establishment. Accordingly the learned Tribunal came to hold that the Petitioners' establishment is an "industry", as provided u/s 20) of the I.D. Act, and proceeded to answer the reference on merit.

9. The contention of the learned Counsel for the Petitioner is that the said findings of the learned Tribunal that the Petitioner's establishment is an "industry" is erroneous and misconceived, inasmuch as, the same is purely a Research Institute and does not undertake any commercial activities, so as to come within the definition of an "industry", as defined u/s 20 of the I.D. Act.

10. Section 2 (j) of the I.D. Act defines "industry", which reads as under:

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.

11. With reference to the definition of "industry", as quoted above, the learned Counsel for the Petitioner submits that as the Petitioner establishment does not undertake any business or trade or manufacturing activities and its activities being purely in the nature of scientific research, it cannot be regarded as an "industry" and therefore the learned Tribunal had no jurisdiction or authority to adjudicate the dispute. Moreover as the activities of the Petitioner establishment are Sovereign functions of the State, the same cannot be construed as an "industry" nor its employees can be said to be workmen, so as to come within the ambit of the I.D. Act.

12. Shri R.B. Mohapatra, learned Counsel for the workmen, opposite parties 2 and 3, refers to the findings of the learned Tribunal given in the impugned award in support of his contention that the activities of the Petitioner partake the character of a "industry" and merely because some scientific research work is done with regard to breeding of pedigree bulls and cows, the same cannot detract from the basic fact that it is an industry. He refers to the landmark Constitutional Bench decision of the Supreme Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , wherein the criteria for determining the activity of an establishment as an "industry" was laid down which are as follows:

Where there is (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale, prasada or food), prima facie, there is an "industry" in that enterprise.

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

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

The consequences are (i) professions, (ii) clubs (iii) educational institutions, co-operatives, (iv) research institutes, (v) charitable projects and (vi) other kindred adventures, if they fulfil the triple tests listed above cannot be exempted from

the scope of Section 2(j)."

13. As regard the dominant nature test to determine as to whether the activities of an establishment amounts to Sovereign functions, the Hon"ble Court held as follows:

Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments will be true test. The whole undertaking will be "industry" although those who are not "workmen" by definition may not benefit by the status.

Sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 20).

14. Shri Mohapatra has also referred to a subsequent decision of the apex Court in the case of Agricultural Produce Market Committee Vs. Shri Ashok HariKuni and Another Etc., , wherein the Hon"ble Court has further clarified as to what activities or functions of the State can be said to be a Sovereign function, which is as follows:

In other words, it all depends on the nature of power and the manner of its exercise. What is approved to be "Sovereign" is defence of the country, raising armed forces, making peace or war, foreign affairs, power to acquire and retain territory. These are not amenable to the jurisdiction of ordinary civil Courts. The other functions of the State including welfare activity of State could not be construed as "sovereign" exercise of power. Hence, every governmental function need not be "sovereign". State activities are multifarious. From the primal sovereign power, which exclusively inalienably could be exercised by the Sovereign alone, which is not subject to challenge in any civil Court to all the welfare activities, which would be undertaken by any private person. So merely one is employee of statutory bodies would not take it outside the Central Act. If that be then Section 2(a) of the Central Act read with Schedule I gives large number of statutory bodies should have been excluded, which is not. Even if a statute confers on any statutory body any function which could be construed to be "sovereign" in nature would not mean every other functions under the same statute to be also sovereign. The Court should examine the statute to sever one from the other by comprehensively examining various provisions of that statute. In interpreting any statute to find it is "industry" or not we have to find its pith and substance. The Central Act is enacted to maintain harmony between employer and employee which brings peace and amity in its functioning. This peace and amity should be the objective in the functioning of all enterprises. This

is to the benefit of both, employer and employee. Misuse of rights and obligations by either or stretching it beyond permissible limits have to be dealt with within the framework of the law but endeavour should not be in all circumstances to exclude any enterprise from its ambit. That is why Courts have been defining "industry" in the widest permissible limits and "sovereign" functioning within its limited orbit.

15. Shri Mohapatra, learned Counsel has drawn the attention of this Court to the specific findings of the learned Tribunal with regard to the application of Model Standing Orders by the management to the Petitioner's establishment and also the fact that the Petitioner was engaged in sale of milk and improved variety of Red Sindhi cows and bulls and accordingly submits that the findings of the learned Tribunal in holding that the Petitioner's establishment is an "industry" cannot be faulted.

16. Applying the principles of law as referred to above and considering the findings of the learned Industrial Tribunal as given in the impugned award and the reasons assigned therein in support of the same, no impropriety or illegality can be said to have been committed by the learned Tribunal in holding the Petitioner's establishment as an "industry" as defined u/s 2(j) of the I.D. Act, so as to warrant any interference by this Court. However no submissions having been advanced by the learned Counsel for the Petitioner on the merits of the case, no opinion is expressed in that regard.

The writ petition is therefore devoid of merit and the same is accordingly dismissed. No costs.