
(2014) 08 BOM CK 0009
In the Bombay High Court
Case No : O.O.C.J. W.P. No. 1309/2007

Union of India

APPELLANT

Vs

Mohan P. Gore

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Constitution of India, 1950 — Article 12, 309
Industrial Disputes Act, 1947 — Section 2(j)

Citation : (2014) 6 ALLMR 671 : (2014) 6 BomCR 563 : (2014) 143 FLR 828 :
(2014) LLR 1259 : (2015) 1 MhLj 399

Hon'ble Judges : M.S. Sonak, J

Bench : Single Bench

Advocate : Rui Rodrigues and N.R. Prajapati i/b Anamika Malhotra, Advocate for the Appellant

Judgement

M.S. Sonak, J.—The Union of India questions Part-I award dated 11 October 2006 made by the Central Government Industrial Tribunal, Mumbai (CGIT) holding that All India Institute of Physical Medicines & Rehabilitation is an industry in terms of Section 2(j) of the Industrial Disputes Act, 1947 (said Act). Mr. Rui Rodrigues, learned counsel for the petitioners submitted that, the Tribunal, in passing the impugned award, "has contradicted its own order in Reference No. CGIT-2/581/1998" in respect of Aliyavar Jung National Institute for Hearing Handicapped, Mumbai, which is a similar institute. In the order made on 18 February 1999, the Tribunal has ruled that the Aliyavar Jung National Institute is not an industry within the meaning assigned to this term under Section 2(j) of the said Act. Such contradiction in terms, according to Mr. Rodrigues constitutes both, an error apparent on face of record as well as non application of mind. On this ground, Mr. Rodrigues submits that the impugned award ought to be quashed and set aside and the reference made by the Union of India itself on 27 January 2000, struck down.

2. There is obviously, no merit in the submission. In the first place, there is no material placed on record to establish that Aliyavar Jung National Institute is

"similar" to All India Institute of Physical Medicine and Rehabilitation (said Institute), with which we are presently concerned. Secondly, rulings of Tribunals, particularly upon factual issues, hardly constitute a "precedent". Thirdly, although the award dated 18 February 1999 is not in issue in the present petition, perusal of the same, indicates that the reasoning therein is flawed. The Tribunal, in passing the impugned award was therefore, right in not adverting to, muchless relying upon its previous order dated 18 February 1999. Consistency may be desirable, however, consistency of errors, is certainly not a virtue.

3. The previous order of the Tribunal dated 18 February 1999 relies upon the decision in Writ Petition No. 4480 of 1997 between Prithviraj Dseharwa v. Director. Aliyavar Jung National Institute for Handicapped, in which it has been held that the Aliyavar Jung National Institute is not "State" within meaning assigned to this term under Article 12 of the Constitution of India. Relying upon the ratio of the said Authority, the Tribunal recorded a conclusion that the Aliyavar Jung National Institute is not an industry within the meaning of Section 2(j) of the said Act. This is clear from paragraphs 14 and 15 of the Tribunal's order dated 18 February 1999.

4. Though I am conscious that the Tribunal's order dated 18 February 1999 is not the subject matter of challenge in this petition, since the submission of Union of India, is almost entirely based thereon, there is no option for me, than to record that the reasoning of the Tribunal in the order dated 18 February 1999 is flawed. The scope and parameters of the definition of the "State" under Article 12 of the Constitution of India and "industry" under Section 2(j) of the said Act, are completely different. Merely because an institute may not be "State" for purposes of Article 12 of the Constitution of India, is by no means indication that such institute cannot be an "industry" under Section 2(j) of the said Act. There is no mutual inconsistency between the two terms or the two concepts.

5. In the present case, the Tribunal upon examining the nature of activity undertaken by the institution has concluded that the institution is indeed an "industry" under Section 2(j) of the said Act. This is a finding of fact and there is no real warrant to interfere with the same in exercise of powers of judicial review. The submission that the institution is not "profit making institute" and therefore not an "industry", is stated, only to be rejected. Such submission was negated by the Supreme Court in the case of Bombay Pinjrapole v. Their Workmen, (1971) 2 LLU 393 (SC), and then of course in the celebrated case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, .

6. Krishna Iyer J., speaking for majority in A. Rajappa (supra) referred to three categories of charitable institutions. The first is where the enterprise, like any other, yields profits, but they are siphoned off for altruistic objects. The second is one where the institution makes no profit, but hires the services of employees as in like business, but the goods and services, which are the output of that enterprise, are made available at the low or no costs, to the indigent needy who are priced out of the market. The third is, where the establishment is orientated

on a humane mission, which is fulfilled by the men who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution. It was held that first two categories of institutions, certainly fall within the definition of industry. The test to be applied is the "predominant activity test".

7. Ultimately, even according to the Union of India, the institution is a "hospital" which provides medical facilities to physically challenged persons. Besides, the institute runs several courses at Graduate as well as Post Graduate level for students, who are charged fees for the same. This Court, speaking through Chagla, C.J. in *The Hospital Mazdoor Sabha Vs. The State of Bombay*, took a view that in the wider sense in which the expression "undertaking" is used in the definition, it would cover activities which have no commercial implication, such as hospitals carried on with philanthropic motives. The fact that the Government was running such an activity and that the Government made no profit from the running of such activity, was considered to be "irrelevant" in the case.

8. In *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, the Supreme Court doubted the correctness of the decision in *Hospital Mazdoor Sabha* (supra). In *The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi*, the Supreme Court almost buried *Hospital Mazdoor Sabha* (supra) by observing that the said case had taken an extreme view of the matter, which was not justified.

9. In *A. Rajappa* (supra), however, Seven Judge Bench of the Supreme Court conclusively ruled that the running of a hospital, which may be a welfare activity, is also an industry under Section 2(j) of the said Act. Accordingly, it was held that the decision in *Safdarjung Hospital* (supra) was wrong and *Hospital Mazdoor Sabha* (supra) was right.

10. Learned counsel for the petitioner however submitted that the issue of very applicability of the Industrial Disputes Act, 1947 to employees whose service conditions are governed by the proviso to Article 309 of the Constitution of India, is pending consideration before the Supreme Court in *Umesh Korga Bhandari Vs. Mahanagar Telephone Nigam Ltd. and Another*. In such circumstances, learned counsel submits that liberty be reserved in favour of the Union of India to raise such issue, if ultimately the Tribunal holds against the Union of India, in the present matter. Such request is reasonable and accordingly liberty in this regard is expressly reserved.

11. Subject to the aforesaid, there is no merit in this petition, which is liable to be dismissed and is accordingly dismissed. Rule is therefore, discharged. Interim orders, if any, stand vacated.

12. The dispute before the Tribunal concerns termination of respondent's service in the year 1998. It is therefore, only appropriate that the Tribunal endeavors to dispose of the reference on merits, as expeditiously as possible, and in any case within a period of one year from today.

13. Since the respondent has not put appearance in this matter, the Registry is requested to serve writ upon the Central Government Industrial Tribunal, Mumbai expeditiously. There shall be no order as to costs.