
(1971) 11 BOM CK 0016

In the Bombay High Court

Case No : Special Civil Application No. 185 of 1971

V.A. Chedda

APPELLANT

Vs

Bambai Mazdoor Union

RESPONDENT

Date of Decision : 04-11-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 2

Citation : (1972) 74 BOMLR 243 : (1972) MhLj 504

Hon'ble Judges : Vaidya, J;Deshpande, J

Bench : Division Bench

Judgement

Vaidya, J.—Two questions arise in this petition under Articles 226 and 227 of the Constitution of India. The first question is as to whether the activities carried on by an unincorporated Association in the name and style of the Bombay Grain Dealers" Association constitute it an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The second question is as to whether the reference of the dispute between the office bearers of the said Association, who are the petitioners in the above petition, and the workmen of that Association could be made u/s 10 of the Industrial Disputes Act. The petitioners raised these points as preliminary points before the Industrial Tribunal. The Tribunal held that the activities of the Association constituted it an "industry"; and though the order of reference was not happily worded, the reference was competent as a reference of the "industrial dispute" between the petitioners and the workmen of the Association. The decision of the Tribunal dated November 10, 1970 is challenged in the above petition.

2. It is not disputed by the petitioners, who are the office bearers of the Association, that at the time of the reference of the dispute by the Government u/s 10, owners of 800 ration shops were the members of this Association, that the Association was engaged in the business of distribution of rationed commodities as Well as other goods, that it collected membership fees from its members, received rent of its buildings rented to others, and was making arrangements for

the ration shop owners to get rationed articles from the Government godowns. It was, however, contended by Mr. Shetye, the learned Counsel for the petitioners, relying on an affidavit filed before the Tribunal by petitioner No. 1-the President of the Bombay Grain Dealers' Association, that the Association Was established in 1913 under its Rules and Regulations, which were made with a view to promote and establish fraternal feelings among the retail dealers of grain and to help their members by removing their difficulties in carrying on their business by making representations to Government or semi-Government agencies. It was, therefore, submitted that the Association itself did not carry on any business, trade or commerce and had no profit motive; and hence it was purely a service organisation rendering service to its members with the help of seventy clerks and eight peons in its office at the time when the Government referred the dispute. It was also further submitted that the mere fact that the Association helped the members to take delivery of the goods from the Government godowns did not constitute its activity an industry within the meaning of the Industrial Disputes Act, because the Association was not required to undertake nor did it undertake any sale or purchase of either rationed or non-rationed articles. Further in doing or rendering services to its members, the Association did not get any commission either from the members or from the Government or from any other source. It was said that the Association was doing all these activities like a liason officer without being rewarded in any manner between the Government and its members.

3. It was, however, admitted that the member, whose grains were transported from the Government godown, was paying 85 paise per bag by way of expenditure to be incurred by the Association on his behalf and the said 85 paise were spent by the Association in the following manner:

0.15 paise for Mobadla fund.

0.03 paise for Federation charges.

0.05 paise for Utkarsha fund.

0.62 paise for loading, unloading, transport charges and office expenditure.

It was said that the Mobadla fund was started for creating fraternal feelings amongst the members by distributing the fund so collected among the members Who are not selected as Fair Price or Ration Shops. In the affidavit it was stated that the Association had 5,000 members, out of whom 750 were selected for Fair Price or Ration Shops. It was further contended that the entire fund of the Association was utilised for members only for their welfare and was not utilised by the Association or its office bearers for their personal use. Similarly, the "Utkarsha" fund was also utilised for fostering the feelings of oneness and for their welfare as well as for recreation both mental and physical. The Association was also trying to build a sanitorium at Tithal for the welfare of its members, after meeting the office expenditure of the Association out of 62 paise given by the members for transport of the rationed articles from the Government godown

to the respective shops. It was submitted that although there was one transaction of mortgage in the course of fifteen years of its existence, the normal business of the Association Was not to carry on any business of advancing money or mortgages. Having regard to all these aims, objects and activities, it was, therefore, submitted that the activities of the Association did not constitute any "business, trade, undertaking, manufacture or calling of employers" within the meaning of the definition of "industry" in Section 2(j).

4. The Tribunal over-ruled these contentions raised on behalf of the petitioners, as it found that the principal activities of the Association attracted the ratio in the decision of Chagla C.J. and Bhagwati J. in *Province of Bombay v. Western India Automobile Assn* (1948) 51 Bom. L.R. 58. With reference to the activities of the Western India Automobile Association it was contended in that case, that the sole function of that Association Was to render services to its members and it existed for the purposes of encouraging and developing the automobile movement in Western India, and not for making any profit. This contention was over-ruled by Chagla, C.J., who held that the Association Was an "industry" within the meaning of the definition of the word "industry" in Section 2(j) making the following observations (p. 66):

...I see no reason, looking to the plain words of the section, why such a narrow and restricted meaning should be given to the expression "industry". There is no indication in the section itself that the undertaking referred to in the definition clause must be an undertaking carried on for the purpose of making profit. It may be that as far as a business, trade or manufacture is concerned, every one of those has to be carried on with the profit motive. But as far as an undertaking is concerned, it is something different from business, trade or manufacture, and there is no reason why every undertaking, in order to fall under that sub-clause, must be something done with a view to making profit. The expression "calling" is also sufficiently wide to include in it activities not necessarily concerned with the profit motive. What is really emphasised in this sub-section is the relationship of employers and workers. If you have an undertaking carried on by employers and workers and if in that undertaking a dispute takes place, then you have a dispute in an industry contemplated by the statute, and it cannot be denied that in this particular case both the employers who are the Association and the workers who are the other party to the dispute are engaged in the undertaking known as the Western India Automobile Association which exists for the purpose of rendering services to its members.

5. It is, however, contended by Mr. Shetye, the learned Counsel for the petitioners, that the ratio of that case can no longer be considered to be valid in view of the three later decisions of the Supreme Court, viz. (1) *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, , (2) *Cricket Club of India Vs. Bombay Labour Union and Another*, and (3) *The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi*, . Mr. Shetye has taken us through these three judgments and, with respect, we find

nothing in the said judgments which militates against the principle laid down by this Court in The Western India Automobile Association's case. After full discussion of the case law with regard to the interpretation of the word "industry" as defined in the Industrial Disputes Act, the law is, with respect, precisely summarised by Hidayatullah C.J. in S.J. Hospital case as follows (p. 1413):

It, therefore, follows that before an industrial dispute can be raised between employers and their employees or between employers and employees or between employees and employees in relation to the employment or non-employment or the terms of employment or with the conditions of labour of any person, there must be first established a relationship of employers and employees associating together, the former following a trade, business, manufacture, undertaking or calling of employers in the production of material goods and material services and the latter following any calling, service, employment, handicraft, or industrial occupation or avocation of workmen in aid of the employers' enterprise. It is not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in a commercial sense.

The above decisions of the Supreme Court, therefore, far from over-ruling and affecting in any manner the validity of the decision of this Court in Western India Automobile's case affirm the very principles laid down by this Court for determining as to whether a particular relation of employers and employees is an industry as defined by the Industrial Disputes Act, 1947, irrespective of the fact as to whether the employers carry on the activity for profit or not.

6. Mr. Shetye submitted that it is only an activity, which produces material goods and services, which is implied in the words business or trade or undertaking or manufacture or calling of employers Within the meaning of Section 2(j). The definition in that section is as follows:

"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.

We are not concerned in the present case with the second part of the definition. It may be that the activity of the Association of transporting the rationed goods from the Government godown to the respective ration shops of the members of the Association without earning any profit cannot be held to be business or calling of employers within the meaning of that section. But we do not see any reason as to why it should not fall within the ambit of the word "undertaking" of that definition inasmuch as the activity is definitely an undertaking of the Association, which employs capital or funds and labour of clerks and other labourers for transporting the goods from the Government godown to the respective shops. It is an undertaking which is analogous to trade inasmuch as the activity yields material services to its members.

7. What is, however, argued by Mr. Shetye is that in S.J. Hospital case the

Supreme Court has laid down (p. 1413):

...Material services involve an activity carried on through co-operation between employers and employees to provide the community with the use of something such as electric power, water, transportation, mail delivery, telephones and the like.

Mr. Shetye submits that in the present case the services rendered by way of transporting the rationed goods cannot be said to be services rendered to the community; but they are services rendered to the members. He has further contended that as the services are rendered only to the members, the case would fall within the ratio laid down in the Madras Gymkhana case. This argument must be rejected, because in the Madras Gymkhana Club case the Supreme Court considered the nature of the activity of the Madras Gymkhana Club and held that that being a members' Club it was not an industry. Having regard to the circumstances in which the Club activities were carried on, the Supreme Court observed (p. 565):

...But these circumstances are not truly representative in the case of the club because the services are to the members themselves for their own pleasure and amusement and the material goods are for their consumption.

We are, therefore, of the opinion that what is stated in the said decision with respect to a members' club cannot be applied to an Association like the Grain Dealers' Association which carries on activity of transporting rationed goods from the Government godown to the respective ration shops thereby effecting economy in transport of the goods from the godowns to the ration shops. This activity is essentially a commercial activity intended to benefit and aid trade carried on by members of the Association, though not an activity intended to earn profits. It is an activity integrally connected with the business of the members of the Association. Members by forming and joining the Association and utilising the services of the Association are able to get the benefit of common arrangement for transporting the goods. Such an activity, in our opinion, cannot be analogous to the activity of a Club, like the Madras Gymkhana Club or the Cricket Club of India. It is an activity, which is analogous to business and essentially in aid of business of the members of the Association. Mere fact that in addition to these activities, several other activities mentioned in the Rules and Regulations of the Association are pursued by the Association, cannot take the Association outside the ambit of the definition of "industry" having regard to the fact that at the time the order of reference was made by the Government the principal activity of the Association was in connection with the transport of the goods from the godown to the respective ration shops. We are, therefore, of the opinion that the Tribunal was quite right in holding that the dispute between the Association and its workers was an industrial dispute inasmuch as the activities of the Association render it an industry as defined in the Industrial Disputes Act, 1947. The dispute related to revision of pay scales and adjustment thereof, classification of employees, dearness allowance and other allowances, medical

aid and gratuity and could be referred by the Government u/s 10 of the Industrial Disputes Act, 1947.

8. The rest of the judgment is not material to this report.