
(1974) 07 OHC CK 0011

In the Orissa High Court

Workmen of Dandakaranya Project

APPELLANT

Vs

The Dandakaranya Development Authority and Others

RESPONDENT

Date of Decision : 08-07-1974

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1975) 1 LLJ 121

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Judgement

R.N. Misra, J.—The workmen of the Dandakaranya Project through two registered unions being the Rehabilitation Employees" Union and the Dandakaranya Shramik Sangh are the petitioners challenging the decision of the Union Government conveyed under Annexure 5 that the Industrial Disputes Act, 1947, does not apply to any of the departments of the project. According to the petitioners the president of one of the unions was informed in January, 1969, by the Regional Labour Commissioner (Central), Bhubaneswar (opposite party No. 4) that the appropriate Government in respect of the project is the State Government and as such for conciliation and claim for other reliefs under the Industrial Disputes Act, the machinery of the State Government has to be moved Annexure 1. In May, 1969, the same authority informed the said union.-

On being taken up with the higher authorities the matter was re-examined and it has now been decided that since the Dandakaranya Development Project is a departmental undertaking and all labour in that Project is employed departmentally by the Project Authorities who are directly under the control of Ministry of Labour. Employment and Rehabilitation, the industry carried on by the Dandakaranya Project would be an "industry" carried on by or under the authority of the Central Government and that the "appropriate Government" for the purpose of the Industrial Disputes Act, 1947, would be the Central Government.

(Annexure 2)

The State machinery had been moved in the matter during the time lag between Annexures 1 and 2. In Annexure 3 dated 25th July, 1969, the Assistant Labour Commissioner, Jeypore, forwarded certain complaints of the employees of the project to the Regional Labor Commissioner (Central) for disposal in view of Annexure 2. Ultimately under Annexure 5, the decision was communicated that the Act has no application to the entire project or units under it. In this application the petitioners pray for issue of a writ of certiorari to quash the decision of the Central Government that the Industrial Disputes Act has no application and to direct the opposite party No. 5 (the State of Orissa) to make the conciliation machinery available for disputes between the petitioners and the Management of the project in accordance with law.

2. In the counter-affidavit of the Union Government and its officers, it has been contended that the project is not an "industry" within the definition of Section 2(j) of the Industrial Disputes Act and the earlier view based upon the Supreme Court decision in the case of the State of Bombay v. Hospital Mazdoor Sabha (supra) having been reviewed later by the Supreme Court, the Government took the decision that the said Act has no application to the project.

3. The Dandakaranya Project came into existence in terms of the Government of India Resolution" dated 12th September, 1958, Annexure 6, for the avowed purpose of effective and expeditious execution of the schemes to replace displaced persons from East Pakistan in Dandakaranya and for the integrated development of the area with particular regard to the promotion of the interests of the area's tribal population. The sphere of activity has been confined to the districts of Bastar in Madhya Pradesh and Koraput in Orissa. While the petitioners contend that the project or at least some of the units under it would constitute "industry" the opposite parties have taken the stand that the tests indicated by the Supreme Court in a series of cases when applied to this case would clearly show that the project or no unit under it is "industry".

4. There are 13 sections in the project, namely, project head quarters, finance and accounts, zonal administrations, agriculture and animal husbandry, construction, irrigation, transport and workshop, Industrial, forestry, medical and health, education, supply base, liaison. The earlier view was that excluding the first three and the last three of the aforesaid sections, the other ones constituted "industry". According to the petitioners the earlier view is the appropriate one and the Central Government which is a party to the dispute could not take the final decision to hold to the prejudice of the petitioners that no part of the Dandakaranya Project is an "industry".

5. A preliminary objection has been taken in the counter-affidavit to the maintainability of the application by the two unions. As it appears the Dandakaranya Sharmik Sangha is registered in the State of Madhya Pradesh and has no registration under the Central Trade Union Regulations of 1938. On that footing it has been contended that the said trade union is not entitled to represent the workmen of the project within the State of Orissa. It is not

necessary to examine the preliminary objection because even if the contention of the opposite parties succeeds, the entire writ application cannot be thrown out. The other union can still represent the workmen and the dispute will subsist for decision. Therefore, without getting into a controversy of this type, we proceed to examine the contentions on merit.

6. "Industry" has been defined in Section 2(j) of the Industrial Disputes Act (hereafter referred to, as the "Act") to mean-

...any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen."

"Industrial dispute" has also been defined in Section 2(k) of the Act to mean,

...any dispute or difference between employers and employees or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

The Supreme Court has considered the true meaning of Section 2(j) of the Act in a series of cases. In the case of D.N. Banerji Vs. P.R. Mukherjee and Others, , the application of the Act "to the employees of the Budge Budge Municipality came up for consideration. The Court took the view that the terms in Section 2 (j) and (k) of the Act should be given wide import and what meant strictly to be called "trade" or "business" must be taken to have been included in the word "industry".

7. In the case of State of Bombay v. Hospital Mazdoor Sabha 1960 I L.L J. 251, the Court pointed out that it was difficult to" state definitely or exhaustively the possible attributes the presence of which makes an activity an undertaking within Section 2(j); as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organised or arranged, the conditions of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2(j) applies. Referring to the conventional meaning attributed to the words "trade and business", the Court further held that the same has lost all its validity for the purpose of industrial adjudication. Industrial adjudication has necessarily to be aware of the current of socio economic thought around; it must recognise that in the modern welfare State healthy industrial relations are a

matter of paramount importance and its essential function is to assist the State by helping a solution of industrial disputes which constitute a distinct and persistent phenomenon of modern industrialised States. In attempting to solve industrial disputes industrial adjudication does not and should not adopt a doctrinaire approach. It must evolve some working principles and should generally avoid formulating or adopting abstract generalisations. Nevertheless it cannot harp back to old age notions about the relations between employer and employee or to the doctrine of *laisse faire* which then governed the regulations of the said relations. That is why in construing the wide words used in Section 2(j) it would be erroneous to attach undue importance to attributes associated with business or trade in the popular mind in days gone by.

8. The Court further stated that negatively stated, the activities of the Government which can be properly described as regal or sovereign activities are outside the scope of Section 2(j). These are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake. But it is only these activities that are outside the scope of Section 2(j). Activities undertaken by the Government in the interests of socio-economic progress of the country as beneficial measures are not exempted from the operation of the Act which in substance is a very important beneficial measure itself.

9. Then came to case of Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club, , On this occasion, the Court stated:

The definition of "industry" is in two parts. In its first; part it means any business, trade undertaking, manufacture or calling of employers. This part of the definition determines an industry by reference to occupation of employers in respect of certain activities. These activities are specified by five words and they determine what an industry is and what the cognate expression "industrial" (is intended to convey. This is the denotation of the term or what the word denotes.

The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By the second part of the definition any calling, service, employment, handicraft or industrial occupation or avocation of workmen is included in the concept of industry. This part gives the extended connotation.

If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part, takes in the different kinds of activity of the employees mentioned in the second part. But the second part standing alone cannot define "industry".

(quoted from head note)

10. Next came the case of The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi, . The Constitution Bench reviewed the cases of the Court including that of the Hospital Mazdoor Sabha (supra), and said that to constitute

an industry there must be collective enterprise in which employers follow their avocations detailed in definition and employ workmen to fulfil their occupations. An "industry" as defined in Section 2(j) exists only when there is a relationship between employers and employees, the former engaged in business, trade, undertaking, manufacture or calling of employers and the latter engaged in any calling, service, employment, handicraft or industrial occupation or avocation. There must, therefore, be an enterprise in which the employers follow their avocations as detailed in the definition and employ workmen who follow one of the avocations detailed for workmen. Some guideline was indicated also to find out when an undertaking would amount to industry.

11. That decision was followed by the case of *Bombay Pinirapole v. Workmen* 1997 II L.L.J 393. The Court applied the principles laid down in several cases to find out whether the Pinirapole was an industry and examined the matter at length with reference to detailed facts and came to hold that though at the point of commencement it was not an industry, the activities carried on by the Pinirapole clearly showed that it turned out to be an industry later on.

12. Next came the case of *Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal*, , In paragraph 27 of the judgment it has been stated:

It appears to us that the tests for determining whether a dispute is an industrial dispute, or not have been enunciated and the principles crystalised as a result of the several decisions of this Court which is what are applicable to this case. There is, therefore, no warrant to allow any other element to be added to the criteria laid down for determining what an industry is. In our view the I inch-pin of the definition of industry is to ascertain the systematic activity which the organisation is discharging, namely, whether it partakes the nature of a business, or trade, or is an undertaking or manufacture or calling of employers. It is that and there is co-operation of the employer and the employee resulting in the production of material services, it is an industry notwithstanding that its objects are charitable or that it does not make profit or even where profits are made, they are not distributed among the members.

13. In the instant case, the workmen have been aggrieved by the fact that their employer has taken a final decision and has refused to get the dispute determined by an appropriate forum. Some material has been placed before us by both sides to support their rival contentions. Mr. Misra for the petitioners has tried to impress upon us that even if the entire project is not an industry, certain activities in the various departments satisfy the tests indicated by the Supreme Court and they would be industry. He relies upon the decision of the Supreme Court in the case of *The Corporation of the City of Nagpur Vs. Its Employees*, , where the Supreme Court took the view that while the entire Corporation was not an "industry", some of its wings were. It is difficult for us in our extraordinary jurisdiction to examine all the materials and come to a conclusion on the point as to whether the Dandakaranya Project or some of its departments

constitute "industry" within the meaning of Section 2(j) of the Act. We are, however, not satisfied with the stand of the Union Government that its decision reached ex parte is the final word in the matter. The workmen and the Union Government are two contending parties and the point in dispute is as to whether the activities of the project attract the character of industry as defined in Section 2(j) of the Act. The matter is not free from doubt and would require a thorough examination from various aspects for a determination." A unilateral decision on such a point would certainly be not appropriate and would not be congenial to the interest of the project. Government must act as an ideal employer, the workmen must not labour under a feeling that an arbitrary decision has been taken in the matter and though they are entitled to the benefits under the act, Government clothed with mighty powers are not prepared to entertain the same. In the circumstances of the case, we think it appropriate that the Union Government should have the matter appropriately examined by a competent forum. We dispose of this writ application by directing the Union Government to take appropriate steps accordingly. The reliefs asked for by the petitioners cannot, however, be granted by us. No costs.

B.K. Ray, J.

14. I agree.