

(1990) 02 CAL CK 0009
In the Calcutta High Court
Case No : Matter No. 764 of 1983

Workmen of M/s. Baikuntha Nath Debasthan Trust (Baikuntha Nath Debasthan mandir trust) APPELLANT

Vs

State Of West Bengal and Others RESPONDENT

Date of Decision : 15-02-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 2(j)

Citation : 94 CWN 855

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kalyanmoy Ganguli, J.—In ties application under Article 226 of the Constitution of India, the petitioner, inter alia, prays for a writ in the nature of mandamus commanding the respondents to rescind, recall, cancel and withdraw an award dated December 8, 1987 passed in case No. VIII-149/84 by the respondent No. 3 pursuant to an order of reference made by the Government of West Bengal Labour Department by order No. 1134/IR/IR/IIL 292/83 dated April 26, 1984.

2. The petitioner is a Trade Union registered under the Trade Unions Act and represents the employee of respondent No. 2. It is stated in the petition that the petitioner raised a charter of demands before the respondent No. 2 and the respondent No. 2, as a consequence thereof terminated the services of seven workmen without any charge-sheet and/or enquiry and without assigning any reason for such termination and without paying any compensation at the time of termination.

3. The petitioner raised on industrial dispute before the appropriate authority and as the conciliation failed, the Government of West Bengal, ultimately, referred the said dispute to the learned 8th Industrial Tribunal, West Bengal, hereinafter referred to as the said learned tribunal. The issues were as follows: -

- (i) Revision of Wages
- (ii) Dearness Allowances
- (iii) Tiffin Allowances
- (iv) Medical Allowances
- (v) Leave and holiday and
- (vi) Duty hours.

Both the petitioner and the respondent No. 2 filed their written statements along with the list of documents.

4. The respondent No. 2, in its written statement took a preliminary objection, inter alia, to the effect that the respondent No. 2 is not an "industry" within the meaning of section 2(j) of the Industrial Disputes Act, 1947, hereinafter referred to as the said Act and prayed before the said learned Tribunal being respondent No. 3 to the writ petition to hear and dispose of the said preliminary point before entering into the merits of the case.

5. The learned Tribunal was pleased to decide the preliminary. Point first and asked the parties to adduce the evidence on the said preliminary point.

6. The petitioner led evidence to prove that the respondent No. 2 is an "industry" and the respondent No. 2 adduced evidence in support of its contention that it is not an "industry" within the meaning of section 2(j) of the said Act.

7. Before proceeding further, a reference may be made to the case of M/s. Reckitt and Colman of India Ltd. Vs. 5th Industrial Tribunal & Ors. reported in 1980 Lab. 1.C. 92. In paragraph 7 of the

said judgment it was, inter alia, held as follows:

..... when a reference is made u/s 10 there is a presumption of existence of an industrial dispute. That presumption is no doubt a rebuttable one. But for the purpose of rebutting the same it requires evidence to be adduced by the employer.

8. It appears from the cadence adduced by the parties that the respondent No, 2 has got a rate chart to offer Prasad to outsiders. There are several types of pujas i.e. Archana, Pushpaseba, Abhishek etc. and the charges for each type of puja are different. The respondent No. 2 publishes its. Income and Expenditure Account and Balance Sheet etc. indicating the amount of Fixed Deposit to the tune of Rs. 21,68,500. It is in evidence that the Manager was a paid employee. It is in evidence that the respondent No. 2 publishes books and sells them to customers. The respondent No. 2 engages clerical staff to maintain the books of accounts. There are 7 servants, 10 darwans, 10 pujaris, one munim, one Manager and 2 electricians who are paid regular wages The respondent No. 2 also lets out its halls for various purposes. The respondent No. 2 engages about

35 or 36 people to work within the trust and the temple is under the control of the trust. There are fixed duty hours for the employees for the three shifts.

9. The respondents contended (1) that the once of the trust is situate at 21, Strand Road, Calcutta-1 where there is no employee except its Hony. Secretary (2) that the trust has only one mandir and no other institution, (3) that the activity of the trust is confined to run the mandir and worship of the deities thereof (4) that the mandir is situate at 12/A, Kali Krishria Tagore Street, Calcutta-I, (5) that the deities of the mandir are worshipped by the pujaries and other services to the deities are carried out by the non paid devotees and shiswas, (6) that the mandir does not sell Bhog but distribute it free of costs to its devotees (7) that the religious books and photographs of Bhagaban Sri Baikunthanath are distributed free of costs, although some time a token amount is accepted to upkeep the religious faith of the devotees, (8) that it holds religious discussions, Bhagabath path, Geeta path etc. The Tribunal by its award dated December 8, 1989, on an appraisal of the evidence came to the conclusion that the respondent No. 2 is not an "industry" within the meaning of section 2(j) of the said Act.

10. The respondents cited a large number of cases, but reference maybe made to the case of Keshaba Bhatt vs. Sriram Ambalam Trust & Anr. reported in 1989 LIN 32 3 420. In the said case it was, inter alia, held that a priest in a family temple was not a worker. The said case has no application in the facts of the present case, inasmuch as in the instant case, the allegation is that there are 10 salaried pujaries in the mandir which also employs other employees. The reference has also been made by the respondent No. 2 to the case of Radhasoami Satsang Dqyalbag, Agra Vs. Rashtriya Mazdoor Congress & Ors. reported in FLR 1977 Vol. 55 page 850 in which it was, inter alia, held that an activity preponderantly religious even though ccmmercially oriented will be beyond the scope of section 2(j) of the said Act. This is a decision of the Allahabad High Court which held that the predominant object of running the farm in the said case was religious, and not secular and that it should not be considered to be an "industry" in view of the dictum of the Supreme Court reported in The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, Reference was also made by the respondent No. 2 to the case of Raj Ratna Seth Vs. Ashok Bhasin & Anr. reported in 1982 Lab I.C. 338 wherein it was, inter alia, held that where the students were doing most of the work in the gurukul and minimal employees were hired only for doing the heavy work, such hiring of the employees will not destroy the non employee character of the institution. It was found in the said case of Gujarat High Court that a large majority of the participants in the activity were not paid employees, but for the upkeep of the institution and to feed the ashramites, certain persons were employed on remuneration.

11. Reference was made by both the parties to the celebrated case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, The decision is so

well known that any reference to any of the observations made in the said case will amount to emphasizing the obvious. Nevertheless a brief reference may be made to two paragraphs of the said judgement, namely, paragraphs 129 and 132. Paragraph 129 reads as follows:

The second species of charity is really an allotropic modification of the first. If a kind-hearted businessman or high minded industrialist or Service-minded operator hires employees like his non-philanthropic counter-parts and in co-operation with them, produces and supplies goods and services to the lawly and the lost the needy and the ailing without charging them any price or receiving a negligible return, people regard him as of charitable disposition and his enterprise as a charity. But then, so far as the workmen are concerned, it boots little whether he makes available the products free to the poor. They contribute labour in return for wages and conditions of service. For them the charitable employer is exactly like a commercial-minded employer. Both exact hard work, both pay sandbar wages both treat them as human machine cogs and nothing more. The material difference between the commercial and the compassionate employers is not with reference to the workmen but with reference to the recipients of goods and services. Charity operates not vis-a-vis the workmen in which case they will be paying a liberal wage and generous extras with no prospect of strike. The beneficiaries of the employer's charity are the indigent consumers. Industrial law does not take note of such extraneous factors but regulates industrial relations between employees and employers, employers and workmen and workmen and workmen. From the point of view of the workmen there is no charity. For him charity must begin at home. From these strands of throughout flows the conclusion that the second group may legitimately and legally be described as industry. The fallacy in the contrary contention lies in shifting the focus from the worker and the industrial activity to the disposal of the end product. This law has nothing to do with that. The income tax law may have, social opinion may have.

12. If employer employee relations exists within the institution it should be labeled as industry The motivation of the employee in the final disposal of products or profits berg immaterial "to qualify for exemption from the definition of "industry" in a case where there are employers and employees and systematic activities and production of goods and services we need a totally different orientation, organisation and method which will stamp on the enterprise, the imprint of commerciality. Special emphasis in such cases must be placed on the central fact of employer-employees relations. If a philanthropic devotion is the basis for the charitable foundation or establishment, the institution is headed by one who whole-heartedly dedicated himself for the mission and pursues it with passion, attracts others into the institution not for wages but for sharing in the cause and its fulfillment then the undertaking is not "industrial". Not that the presence of charitable impulse extricates the institution from the definition in section 2(j) but that there is no economic relationship such as is found in thade or business between the head who employs and the others who emotively flock

to render service. In one sense, there are no employers and employees but cursaders all. In another sense, there is no wages basis for the employment but voluntary participation in the production, inspired by lofty ideals and unmindful of remuneration, service, conditions and the like. Supposing there is an Ashram or Order with a guru or other head. Let us further assume that there is a band of disciples, devotees or priestly subordinates in the Order, gathered together for prayers, ascetic practices, bhajans, meditation and worship. Supposing further that, outsiders are also invited daily or occasionally to share in the spiritual proceedings. And, let us assume that all the inmates of the Ashram and members of the Order, invitees, guests and other outside participants are fed, accommodated and looked after by the institution. In such a case, as often happens, the cooking and the cleaning the bed-making and service may often be done, at least substantially by the Ashramites themselves. They may chant in spiritual octasy even as material goods and services are made and served. They may affectionately look after the guests, and all this they map do not for wages but for the chance to propitiate the Master, work selflessly and acquire spiritual grace. It may well be that they may have surrendered their lucrative employment to come into the holy institution. It may also be that they take some small pocket money from the donations or takings of the institution. Nay more, there may be a few scavengers and servants, a part-time auditor or accountant employed on wages. If the subsantial numbers of participants in making available goods and services, if the substantive nature of the work, as distinguished from trivial items, is rendered by voluntarily wageless shishyas, it is impossible to designate the institution as an industry, notwithstanding a marginal few who are employed on a regular basis for hire. The reason is that in the crucial, substantial and substantive aspects of institutional life the nature of the relations between the participants is non industrial. Perhaps, when Mahatma Gandhi lived in Sabarmati, Aurobindo had his hallowed silence in Pondicherry, the inmates belonged to this chastened brand. Even now....."

13. Applying the said test in the facts of the instant case I do not find that the respondent No. 2 has adduced any evidence to the effect that the mandir is an institution which is substantially run by the devotees and shiswas that such shiswas taking recourse to namagana, bhajana or chart in spiritual ecstasy and transported to a celestial life. On the contrary the evidence is to the effect that the seba puja is performed by hired pujaris on a regular wage basis and even the debarati is performed by professional purohits. The intitution is run more on commercial than spiritual line. It does not appear from the evidence adduced that only minimal employees are engaged to do institutional jobs. In fact it appears that out of the 10 hired pujaris some perform the seba puja and others cook food which is charged at a very high price. In fact a Kolosshabhishek costs about Rs. 3,251. Astottar costs Rs. 1,451, Pushpaseba costs as much as Rs. 701, Mangalagiri about Rs. 312. Devotees have to pay such surges to propitiate God installed in the temple. It further appears that no devotee is permitted to bring flower or food but have to pay the costs thereof to the employees of the mandir

in order to obtain the blessings of God. This mercenary approach of the authorities speaks volumes about the commercial nature of the enterprise and in fact it appears from the Balance Sheet that there remains a large surplus in the fund after expenses are paid for making such prasads. It may be reiterated that no evidence has been led by the respondent No. 2 to prove that a large numbers of shiswas congregate there for the sole purpose of obtaining the blessings of God by worshiping Him themselves, doing the daily chores including the seba puja participating in kirtana, bhajana, pathas etc. and that for the purpose of keeping the unit in shape only a few employees are hired. There is no evidence that worship of God is done by devotees. In fact it is done by Pujaris on a regular wage basis Pujaris who place a charter of demands. The evidence preponderantly is on the other side. Applying the tests laid down in the Banjaloie Water Supply case (supra) read with the case of M/s. Reckitt & Colman of India Ltd. (supra) it can be said that the respondent No. 2 has failed to rebut the, presumption that it is not an industry within the meaning of section 2(J) of the said Act.

14. The learned Tribunal did not look at the matter in its proper perspective in order to come to in ending that the respondent No. 2 is not an industry.

15. In the circumstances, this application succeeds and, the Rule is made absolute. Let a writ in the nature of mandamus issue revoking and canceling the award impugned in the Rule. Let the matter go back to the Tribunal for a decision on merits. Much time has already been wasted and the Tribunal is directed to bear out the matter as expeditiously as possible, preferably within six months from the date of communication of this order, without granting any adjournment to any of the parties except under compelling circumstances.

16. There will however, be no order as to costs.

Prayer for stay of operation of the order made and rejected.

All parties to act on a signed copy of the minutes of the operative portion of the judgment on the usual undertaking,