

(1979) 11 SC CK 0040

In the Supreme Court Of India

Case No : Civil Appeal No. 290 (L) of 1974

Workmen of Tirumala Tirupathi Devasthanam

APPELLANT

Vs

Management and Another

RESPONDENT

Date of Decision : 30-11-1979

Acts Referred:

Payment of Bonus Act, 1965 — Section 32(5)

Citation : AIR 1980 SC 604(1) : AIR 1980 SC 604 : (1980) 1 LLJ 211 : (1980) 1 SCC 583 : (1980) 12 UJ 170

Hon'ble Judges : V. R. Krishna Iyer, J;R. S. Pathak, J;O. Chinnappa Reddy, J

Bench : Full Bench

Final Decision : Allowed

Judgement

V.R. Krishna Iyer, J.—The main issue raised in this appeal turns on a construction of Section 32(5) of the Payment of Bonus Act and its application to the facts of the present case. The Trumila Tirupathi Devasth name has a very wide circle of devotees who come from all over the country, The Devasthanama caters to their needs and provides the amenities since pilgrims flock to the shrine. One of those facilities is stated to be offering transport services for pilgrims to come to Tirupathi from oistant places. Inevitably the Transport Department is operating under the Devasthanam and employs a large number of transport workers. These workmen raised an industrial dispute making a demand for bonus for the years 1965 1973. The reference was duly made to the Tribunal which considered inter alia the question as to whether Section 32 of the Act excluded from the operation of the bonus obligation, the respondent institution. The plea was upheld and the reference was held do be invalid.

2. The Tirumala Tirupathi Devasthanam, a vast and unique religious organisation in the country, is certainly net founded for making profit and a tracts people who want to offer worshit to Shri Venkateshwara but then the specific question with which we are concerned is whether the transport operation by the administration falls within the category of institutions within the meaning of Section 32(5)(c). Is

the Transport Department so merged in and integrated with the Devasthanam as to be incapable of independent identity Is the Transport Industry run by the Devasthanam sufficiently spread as to be treated as an institution in itself? There is no doubt, as the Tribunal has rightly held, that it is an industry but the further question arises whether it is an institution in the context and within the text of the Payment of Bonus Act This question has not been properly appreciated by the Tribunal. Secondly, assuming that it is an institution, it does not necessarily follow that Section 32 I excluded. On the other hand, there must be proof that the Transport Department (a) is an institution; and is established not for the purpose of profit, The Tribunal has not correctly appreciated the import of this latter requirement. It has been found that profits made in some years are ploughed back whether that may mean. It is also found that the motive for running the industry of transport was to afford special facilities for the pilgrims. These by themselves do not cinch the issue whether the institution has been established not for purposes of profit, nor are we satisfied that merely because in the administrative report of the Devasthanam, there is mention of the transport establishment as a remunerative enterprise, that is decisive of the issue.

3. The Tribunal has to decide whether the Transport Department, having regard to the features of the administration, the sources of its finance, the balance-sheet that is drawn up and the disposal of the profits, can be considered to be an institution in itself whether it has nexus with the Devasthanam or no The fact that it is run by the Devasthanam, does not keep it out of its being an institution. This aspect has not been considered and must be decided *de novo*.

4. Likewise, merely because it is an institution, the Transport Department does not cease to be one established 'Not for purposes of profit', that has got to be made on its merits. The institution may be designed for profit although it may make or may not make profit. The institution's profits or earnings may be used for other charitable purposes. That also does not determine finally the character of the institution, was the institution not one for purposes of profit, motives apart ? If it was one, definitely not for earning profit but merely as an ancillary facility for pilgrims to reach and to return, 532(5) will exclude the institution. If we may tersely put it, the dominant purpose of the Transport Department will be the decisive factor.

5. We, therefore, set aside the findings of the Industrial Tribunal and direct it to decide the issue *de novo*. We sustain the other findings but permit parties to adduce further evidence on this question so as to enable the Tribunal to make the correct decision. We allow the appeal, remand the case So the Industrial Tribunal but parties will bear their own costs.