

(2014) 04 GAU CK 0021

Gauhati High Court

Case No: WP(C) No. 1725 of 2007

Kanchi Sankara Health and
Educational Foundation

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: April 9, 2014

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10, 2(j), 2(k), 2(s)

Citation: (2014) 143 FLR 642 : (2014) 2 GLD 279 : (2014) 2 GLT 703 : (2014) 3 LLN 368

Hon'ble Judges: Hrishikesh Roy, J

Bench: Single Bench

Advocate: S.N. Sarma, Sr. Advocate and Mr. S.C. Keyal, Advocate for the Appellant; A. Dasgupta, Sr. Advocate, Mr. S. Das and Ms. B. Dutta, GA, Advocate for the Respondent

Judgement

Hrishikesh Roy, J.

Heard Mr. S.N. Sarma, the learned Senior Counsel appearing for the petitioner. The Respondent No. 3 is represented by the learned Sr. Advocate Mr. A.Dasgupta. The State respondents are represented by Ms.B. Dutta, the learned Govt. Advocate. The Kahchi Sankara Health & Educational Foundation (Sri Sankardeva Nethralaya) (hereinafter referred to as "the Management") challenges the award dated 01.03.2007 (Annexure-13) in the Reference Case No. 2/2006 rendered by the learned Labour Court, Guwahati, whereby the termination of the Respondent No. 3 with one month's notice was held to be illegal and consequential direction was issued to reinstate the respondent as the Senior Consultant (Anesthesiologist) with 50% back wages. The petitioner contended that the Sr. Anesthesiologist in the Sankardeva Nethralaya cannot be considered as workman under the Industrial Dispute Act, 1947 (hereinafter referred to as "the I.D. Act") and on that basis, the declaration made by the learned Labour Court is challenged by the Management.

2. The Respondent No. 3 Jogendra Mazumdar was initially appointed as an Anesthesiologist on 14.07.1995 (Annexure-3) and through Clause-III thereof, the Management reserved its right to terminate the service of the appointee by giving a month's salary in lieu of one month's notice. Exercising the option under Clause-III of the appointment order, the service of the doctor was terminated on 18.06.2005 (Annexure-4) and his salary of Rs. 44,744/- for 1 month was tendered in lieu of notice for the terminated doctor.

3. The aggrieved respondent raised a Dispute and the Government then referred the following issues u/s 10 of the I.D. Act:-

1. Whether Dr. Jogendra Mazumdar is "Workman" as defined u/s 2(s) of the Industrial Dispute Act, 1947?

2. If so, whether the management is justified in terminating the service of the petitioner by denying him the principle of natural justice?

3. If not, what relief he is entitled to?

4. On the maintainability of the reference, the learned Labour Court declared that Sri Sankardeva Nethralaya is an industry and the Sr. Anesthesiologist is a workman under the ID. Act. On this finding, since the workman was terminated without disclosing any reason for the decision, the Labour Court held that the termination should have been preceded by a full-fledged inquiry with sufficient opportunity to the workman and since this was not done, the termination was quashed by the Labour Court and reinstatement of the Sr. Consultant (Anesthesiologist) was ordered with 50% back wages.

5. The conclusion reached by the Labour Court is challenged by the Management primarily on the ground that the Sr. Anesthesiologist of Nethralaya was discharging supervisory and administrative duties as the H.O.D. of the Anesthesiology Department and therefore the senior doctor does not come within the definition of workman u/s 2(s) of the I.D. Act.

6. Referring to the amendment brought through the amending Act 46 of 1982, whereby definition of industry u/s 2(j) was substituted by excluding hospitals from the preview of the definition, the declaration of Sri Sankardeva Nethralaya as an industry is also challenged by the Management-petitioner.

7. Highlighting the responsibilities of the Sr. Anesthesiologist through the evidence adduced before the Labour Court, the Sr. Advocate Mr. S.N. Sarma submits that relevant evidence was ignored to reach a perverse conclusion and on that basis the impugned award of 01.03.2007 is contended to be illogical.

8. In his turn for the terminated doctor, Mr. A. Dasgupta, the learned Sr. Counsel submits that since the Nethralaya carries out systematic activity through cooperation between the employer and the workmen, it should be considered as an

industry u/s 2(j) of the I.D. Act. The counsel further submits that the substituted definition of industry through the amending Act 46 of 1982 is yet to be notified and therefore the hospital should not be considered in the excluded category. Therefore whether Nethralaya is an industry or not should be determined on the basis of the unamended definition of industry given by the I.D. Act.

9. The respondent's lawyer refers to the definition of workman given in the I.D. Act and submits that even though a doctor renders skilled service in a hospital, he can still be a workman and accordingly he contends that the conclusion reached by the Labour Court on the reference is just and logical.

10. Before dealing with the other aspects, it may be appropriate first to decide whether the Nethralaya hospital should be placed outside the definition of industry, by application of the changed definition incorporated in the I.D. Act, through the amending Act 46 of 1982. In the context of the amendment in Section 2(s), the Supreme Court in [Coir Board, Ernakulam, Cochin and Another Vs. Indira Devi P.S. and Others](#), examined whether the 1982 amendment on the curtailed definition of industry, (whereby hospitals were excluded) u/s 2(j) of the I.D. Act was given legal force. But since the notification to enforce the 1982 amendment was not issued by the government, the Apex Court opined that the unaltered definition of industry will prevail. Therefore since the Apex Court's interpretation of industry in the [Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others](#), could create confusion, it was suggested that the 1978 judgment be reconsidered by larger Bench. In pursuant to this opinion, a three Judges Bench in [Coir Board Ernakulam Kerala State and Another Vs. Indira Devi P.S. and Others](#), opined that since the 1982 amendment has not been notified by the Government, the judgment in Bangalore Water Supply Sewerage Board (Supra) does not require reconsideration. Therefore the status of the Nethralaya u/s 2(s) of the I.D. Act is now to be examined, by applying this decision. Since the ratio of the decision in [Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others](#), is applicable and there is no change on the applicable principle, I find that the Labour Court's opinion that the Sri Sankardeva Nethralaya is an industry under the I.D. Act is consistent with the Apex Court's interpretation: Therefore the impugned award on this aspect is answered in favour of the Respondent No.3.

11. The next issue that requires consideration is whether the Sr. Anesthesiologist in the hospital can be treated as a workman and whether the Labour Court could examine the legal validity of the doctor's termination on a reference made u/s 10 of the I.D. Act. The Apex court while examining the status of a doctor who was posted at the first aid post in a Government Corporation in [Heavy Engineering Corporation Ltd. Vs. Presiding Officer, Labour Court and Others](#), held that when a doctor attends-patients and in addition thereto, supervises the works of the subordinate staff, the only possible conclusion which can be arrived at is that the doctor cannot

be regarded as a workman u/s 2(s) of the I.D. Act.

12. Similarly in [Muir Mills Unit of N.T.C. \(U.P\) Ltd. Vs. Swayam Prakash Srivastava and Another](#), the Supreme Court while examining the position of a legal assistant declared that there is distinction between occupation and profession and those in the profession of medicine/law who are governed by specific code of ethics profess to a higher standard of accountability and therefore such professionals cannot "be termed as a workmen under any law".

13. In a recent judgment in ESIC Medical Officer's Association Vs. ESIC reported in (2014) 1 LLJ 1 the Supreme Court approved the logic of excluding legal/medical professional from the perview of definition of workman as was held in Muir Mills (Supra) and declared that "a medical professional treating patients.....cannot be held to be workman" within the meaning of Section 2(s) of the I.D. Act.

14. But the Assam High Court in [Bengal United Tea Company Ltd. Vs. Ram Labhaya and Others](#), had declared per contra that the medical officer of a Tea Estate even though renders service of technical nature, is a workman under the I.D. Act. But through the amending Act 34 of 1960 in the Plantation Labour Act, 1951, the T.E. doctors were subsequently excluded from the definition of workmen u/s 2(k) of the Plantation Labour Act. Therefore I am of the view that this court's earlier opinion for a T.E. doctor where the Plantation Labour Act applies, shouldn't be the guiding principle to decide the status of the Sr. Anesthesiologist of the Nethralaya in the present case. Accordingly this aspect should be decided on the basis of the nature of the duties rendered by the Respondent No. 3 and the applicable decisions of the Supreme Court under the I.D. Act.

15. Since the evidence adduced in the court below can throw light on the above question, the Management's lawyer refers to the LCR for the relevant evidence. Exhibits 13 to 21 are the supervisorial assessments made by the Sr. Anesthesiologist for the nurses and the technical staff in the Operation Theatre (O.T.), whose works are supervised by the Respondent No. 3 as the Head of the O.T. in the hospital. The Sr. Anesthesiologist also was responsible for assessing the performance of the junior doctor under him as can be noticed from the Ext. 12 document. Moreover, the Respondent No. 3 was a member of the hospital's Promotion Committee (Ext.20), which considered promotion of a junior doctor in the hospital. Several duty rosters of sisters and technical staff in the O.T. headed by the Sr. Anesthesiologist were produced as Exts.23 to Ext.51 and these evidence clearly show that the petitioner was responsible for assigning the duties of the subordinate staff as the in-charge of the O.T. in the hospital.

16. The Sr. Anesthesiologist's functions in assessing the skills and expertise of his junior colleagues and supervision of the subordinate technical staff under the Anesthesiology Department indicate that the Respondent No. 3 was discharging supervisory responsibility as a senior doctor and HOD in the hospital. The available

evidence clearly shows the supervisory nature of the responsibilities discharged by the Sr. Anesthesiologist who headed the O.T. and who functioned as the H.O.D. of the Anesthesiology Department. Moreover because he drew salary in excess of Rs. 10,000/- p.m., under sub clause (IV) of Section 2(s), he cannot be treated as workman under the I.D. act. But all these relevant evidence were ignored by the Labour Court in order to declare without any material support; that the Respondent No. 3 is not a workman.

17. What is also significant herein is that the Respondent No. 3 in his self-appraisal report given on 29.11.2002 (Ext.4) had claimed that he is working as the O.T. Incharge since 1996 and that he is fully responsible for the efficient functioning of the hospital O.T. and its manpower management. In his evidence in the Labour Court, the Respondent No. 3 dwelt on the responsibilities discharged by him as the Sr. Anesthesiologist of the hospital and his evidence shows that the responsibility of the Sr. Anesthesiologist went much beyond a doctor who treats patients without any supervisory responsibilities. The evidence of the Management witnesses also indicate that the Respondent No. 3 was discharging supervisory function as the senior doctor who headed the O.T. in the hospital.

18. In view of above, I find no logic for the declaration made by the Labour Court to the effect that the Respondent No. 3 is a workman under the I.D. Act. In my considered view, this was perverse conclusion reached by the Labour Court which failed to consider the overwhelming evidence for a contrary conclusion. Therefore, I quash the impugned award dated 01.03.2007 (Annexure-13) by declaring that the reference under the Industrial Dispute Act was not maintainable for the terminated Sr. Anesthesiologist of the Nethralaya as he was not a workman of the hospital under the I.D. Act. With the above declaration, the case stands allowed without any order on cost.