(1980) 08 MP CK 0011

Madhya Pradesh High Court

Case No: Miscellaneous Petition No. 426 of 1979

Administrator Krishi Upaj Mandi, Sagar		APPELLANT
	Vs	
State of M.P. and Others		RESPONDENT

Date of Decision: Aug. 19, 1980

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10(1)

Citation: (1982) JLJ 258 : (1982) MPLJ 161

Hon'ble Judges: G.L. Oza, J

Bench: Single Bench

Advocate: K.N. Agrawal, for the Appellant; L.N. Malhotra, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

G.L. Oza, J.

This petition has been filed by the petitioner seeking a direction to quash the order dated 11-1-1979, passed by the Labour Court, Sagar, and further direction to respondent No. 2 not to recover anything in pursuance of this order passed by the Labour Court.

According to the petitioner, the petitioner is a statutory body constituted under the Madhya Pradesh Agricultural Produce Markets Act, 1960 (Act No. 19 of I960), which has been later amended by Act No. 24 of 1973. The petitioner further contends that the object of the enactment under which the petitioner-body is constituted is to save the agriculturists from exploitation of the middle-men and provide means so that the return is obtained by the agriculturists for their agricultural produce. In this Act provisions have been made to provide for better regulation of buying and selling of agricultural produce and proper administration of the market and in order that

these objects be fulfilled the petitioner body is constituted under this Act.

Respondent No. 2 was appointed as a temporary clerk by the Joint Director of Agriculture, Sagar Division, Sagar, by his order dated 16-8-1975 and by order dated 3-12-1976 his services were terminated with effect from 1-1-1977. Respondent No. 2 was thereafter appointed as a temporary clerk by the petitioner. Misc. Petn. No. 426 of 1979 decided on 19-8-1.980 (Jabalpur)

On 1-10-1977 the petitioner did not find the work of respondent No. 2 satisfactory and as there were complaints, he was suspended on 27-4-1978 and his services were terminated by the petitioner on 16-5-1978, vide orders passed by the petitioner on 15-5-1978.

Respondent No. 2 moved respondent No. 3, the Labour Commissioner, Indore, praying that the order of termination of his service be declared illegal. Respondent No. 3 treating this dispute as an industrial dispute, made a reference to the Labour Court, Sagar, u/s 10(1) of the Industrial Disputes Act, 1947. Before the Labour Court the petitioner resisted the claim of respondent No. 2 contending that the petitioner will not fall within the definition of the term ''industry'' as defined u/s 2(j) of the Industrial Disputes Act, and, therefore, the reference was bad. The Labour Court repelled the contention of the petitioner and held the termination of respondent No. 2''s services as illegal and also directed the relief of wages during the period of unemployment.

It is contended on behalf of the petitioner that this order passed by the Labour Court is bad as the Labour Court exercised the jurisdiction not vested in it by law, as according to the petitioner, the petitioner will not fall within the ambit of the definition of the term ''industry'' as provided for in section 2(j) of the Industrial Disputes Act, and therefore, no reference could be made as the dispute will not be an industrial dispute and, therefore, the relief could not be granted by the Labour Court.

It was contended that section 17 of the M. P. Agricultural Produce Markets Act provides the duties to be performed by the market committee and sub-sections (1) and (2) laid down the general duties and the detailed functions which a market committee is expected to perform. Sub-section (3) of this section provides optional functions of the committee which it could undertake with the prior sanction of the State Government. It was, therefore, contended that all these functions in the light of the purpose for which the market committee is constituted and the object for which this enactment provides for constitution of these committees, clearly go to show that the functions are neither commercial nor in the nature of trade nor they are with profit motto and under these circumstances, therefore, the petitioner committee will not come within the mischief of section 2(j) of the Industrial Disputes Act.

Learned counsel for the petitioner further contended that the question of application of the Provident Fund Act came for consideration before a Division Bench of this Court and it was held in Krishi Upaj Mandi Samiti, Sagar v. Regional Provident Fund Commissioner, Indore 1980 MPLJ 359 that the petitioner will not be covered under the scheme of the Provident Fund Act. Learned counsel placing reliance on Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, contended that in the light of the interpretation put on the term ''industry'' in this decision the petitioner will not be covered. Reliance was also placed on the decision reported in Secretary, Madras Gymkhana Club Employees'' Union Vs. Management of the Gymkhana Club, .

Learned counsel for the respondent contended that the definition of the term ''industry'' as defined in section 2(j) of the Industrial Disputes Act is wide enough to cover the petitioner. The activities of the petitioner being not in the nature of trade or not being commercial and not motivated with profit motto, are altogether irrelevant. The tests la d down in Bangalore Water Supply & Sewerage Board v. A. Rejappa (supra) if applied to the functions that the petitioner committee perform, especially as contemplated in subsection (3) of section 17, which the Labour Court found as a fact, the petitioner would be covered in the definition of the term ''industry''. He also contended that the decision in the Secretary Madras Gymkhana Club Employees'' Union v. The Management of the Gymkhana Club on which reliance is placed, has been over-ruled by the decision reported in Bangalore Water Supply Sewerage Board v. A. Kdjappa (supra). As regards a Division Bench decision of this Court reported in Krishi Upaj Mandi Samiti, Sagar v. Regional Provident Fund Commissioner, it was contended by the learned counsel that in that case the definition of the term ''industry'' was not for consideration. That case referred to the scheme of the Provident Fund Act. Apart from it, it was contended that unfortunately the functions of the market committee as contemplated under sub-section (3) of section 17 were not brought to the notice of the Division Bench and it appears that in the absence of those functions the Division Bench ruled that the scheme of the Provident Fund Act is not applicable to the petitioner. But in the present case the learned Labour Court has found as a fact the functions which are carried out by the petitioner under sub-section (3) of section 17 and, therefore, the petitioner will fall within the definition of the term ''industry'' as defined in section 2(j) of the Industrial Disputes Act, and, therefore, the order passed by the Labour Court could not be said to be bad in law.

The petitioner is a statutory body and the functions of the petitioner have been provided in section 17 of the M. P. Krishi Upaj Mandi Adhiniyam, 1972. Section 17, sub-sections (1) and (2) provide for the duties of the petitioner market committee and sub-section (3) of this section provides for the functions which the market committee could perform with the prior sanction of the Government. Sub-section (3) of section 17 reads:

Section 17(3). With the prior sanction of the State Government the market committee may at its discretion, undertake the following duties -

(i) to give, grant or advance funds to the Public Works Department of the State Government or any other agency authorised by the State Government for the construction of roads or godowns in the market area to facilitate storage and transportation of agricultural produce or for the purpose of development of the market yard.

(ii) to maintain stock of fertilisers, pesticides, insecticides, improved seeds, agricultural equipments and pumps and distribute them to agriculturists on payment or to rent out tractors to agriculturists with a view to assist them to increasing agricultural production;

(iii) to provide on rent storage facilities for stocking of agricultural produce to agriculturists;

(iv) to give grant for maintenance of the ''Goshalas'' recognised by the State Government.

This sub-section provides for keeping of stocks of fertilizers, pesticides, insecticides, improved seeds, agricultural equipments and pumps and it also provides that these things will be distributed to the agriculturists on payment. It also provides that the committee shall keep tractors which may be rented out to the agriculturists with a view to increase agricultural production. Learned Labour Judge in his order has considered this aspect of the matter and it is on these findings that the learned Labour Judge came to the conclusion that these activities when considered in the light of the tests laid down in Bangalore Water Supply & Sewerage Board v. A. Rajappa the petitioner would fall within the definition of ''industry'' as defined in section 2(j) of the Industrial Disputes Act. Section 2(j) of the Industrial Disputes Act reads :

S. 2. Definitions-In this Act, unless there is anything repugnant in the subject or context-(j)-"Industry" means any business, trade, undertaking, manufacture or calling of employees and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

The first sentence of this section indicates the nature of the definition, which has been provided for in the sub-section and the language suggests that it has to be understood in the wider context except if there is anything repugnant available from the subject or context. The purpose of Industrial Disputes Act as it appears from the Preamble is-"Whereas it is expedient to make provision for the investigation and settlement of industrial disputes and for certain other purposes hereinafter appearing; it is hereby enacted as follows:" This, therefore, clearly indicates that this law has been enacted for investigation and settlement of industrial disputes. In section 2(j), although the word ''industry'' has been used, but

what has been provided in the definition of word ''industry'' makes it clear that things which in the ordinary parlance may not come within the word ''industry'', have been included in the definition and, therefore, from the meaning of the word ''industry'' no inference could be drawn.

An attempt was made on behalf of the learned counsel for the petitioner that as the activities of the petitioner are not activated with profit motto, therefore, it cannot be treated as a commercial establishment or connected with business or trade and apparently it could not be an industry. But reading of the definition clearly goes to show that although various words have been used, it has been further enacted by an inclusive phrase ''includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen''.

Learned counsel for the petitioner placed reliance on a Division Bench decision of this Court in Krishi Upaj Mandi Samiti Sagar v. Regional Provident Fund Commissioner, wherein the scheme of the Provident Fund Act was considered. In this decision a Division Bench of this Court considered the Notification of the Government of India applying the Provident Fund Act to various establishments, which reads-

Trading and Commercial establishments engaged in the purchase, sale or storage of any goods, including establishments of exporters'', importers, advertisers, commission agents and brokers and commodity and stock exchanges but not including banks or warehouses established under any Central or State Act.

It appears that this Notification made the Provident Fund Act applicable to trading and commercial establishments engaged in the purchase, sale or storage of any goods and it was in this context that the Division Bench considered the duties of the market committee u/s 17. In this judgment section, 17, sub sections (1) and (2) have been considered, but as pointed out by the learned counsel for the respondent, sub-section (3) has not been referred to at all and apparently as section 17, sub-sections (1) and (2) do not refer to any functions like purchase and sale of any goods, the Division Bench of this Court held that the Provident Fund Act scheme will not be applicable to the Krishi Upaj Mandi Samiti constituted under this Act. The definition of ''industry'', it could not be disputed, is in much wider term and on examination of sub-section (3) of section 17, it could not be disputed that the petitioner stores the fertilizers, insecticides and other things and distributes them on payment and also keeps pumps and distributes them on payment, keeps tractors and runs them on hire and does various things of this kind with an intention to increase the agricultural production. It is not disputed before me also that the petitioner is not performing any one of these functions. On the contrary it is admitted that the functions enumerated in sub-section (3) are being performed by the petitioner committee. It is, therefore, clear that these functions fall within the ambit of the definition of the term ''industry'' as provided in section 2(j) of the Industrial Disputes Act.

Learned counsel for the petitioner laid much emphasis on non-profit motive for which all these activities are performed. In Bangalore Water Supply and Sewerage Board v. A. Rajappa their Lordships of the Supreme Court re-affirmed what was laid down in D. N. Banerji v. P.R. Mukherjee AIR 1953 SC 38 and held:

Industry, as defined in section 2(j) and explained in Banerji''s case has a vide import, (a) where (i) systematic activity, (ii) organised by cooperation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, i.e., making, on a large scale prasad or food) prima facie, there is an industry in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

II. Although section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) ''Undertaking'' must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment: so also, service, calling and the like. This yields the inference that all organised activity possessing the triple elements in I (supra) although not trade or business, may, still be an ''industry'' provided the nature of the activity, viz., the employer employee basis, bears resemblance to what we find in trade or business. This takes into the fold ''industry'' undertakings, callings and services, adventures ''analogous to the carrying on trade or business''. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults, or inner sense of incongruity or outer senses of motivation for or resultant of the economic, operation. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) professions, (ii) Clubs, (iii) educational institutions, (iv) co-operatives (v) research institutes, (vi) charitable projects and (vii) other kindred adventures, if they fulfill the triple tests listed in I (supra), cannot be exempted from the scope of section 2(j).

(b) a restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantially, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertaking alone are exempt-not other generosity compassion, developmental passion or project.

IV. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" as in University of Delhi and Another Vs. Ram Nath, or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in The Corporation of the City of Nagpur Vs. Its Employees, will be the true test. The whole undertaking will be ''industry'' although those who are not ''workmen'' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

V. We overrule the cases in The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi, , University of Delhi and Another Vs. Ram Nath, and Dhanrajgirji Hospital and Other AIR 1955 SC 2032 rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha AIR 1968 SC 554 is hereby rehabilitated.

The tests laid down by their Lordships as stated above if applied to the activities of the petitioner, it will be clear that the petitioner will fall within the ambit of the

definition of the word ''industry''. This decision has ultimately settled the Jaw as all the earlier decisions have been considered and the decision on which reliance was placed by the counsel for the petitioner, i.e. The Secretary Madras Gymkhana Club Employees'' Union v. The Management of the Gymakhana Club have been clearly over-ruled.

Learned counsel for the petitioner laid much emphasis on the use of the words in the definition of the term ''industry'' and contended that these words clearly indicate that there could be no activity in the nature of trade or business except if it is not carried out with profit motive. But as laid down by their Lordships of the Supreme Court in the decision quoted above, nothing could be made out from the meaning of the terms. Definition has to be understood in the light of the phraseology employed in the context for the purpose for which it is enacted. In the words of LORD DENNING :

At one time the Judges used to limit themselves to the bare reading of the Statute itself-to go simply by the words, giving them their grammatical meaning, and that was all. This view was prevalent in the 19th century and still has some supporters today. But it is wrong in principle. The meaning for which we should seek is the meaning of the Statute as it appears to those who have to obey it-and to those who have to advise them what to do about it; in short, to lawyers like yourselves. Now the Statute does not come to such folk as if they were eccentrics cut off from all that is happening around them. The Statute comes to them as men of affairs-who have their own feeling for the meaning of the words and know the reason why the Act was passed-just as if it had been fully set out in a preamble. So it has been held very rightly that you can inquire into the mischief which gave rise to the Statute-to see what was the evil which it was sought to remedy.