

islampur Municipality Vs. their Workmen

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Court : Mumbai

Decided On : May-24-1956

Reported in : (1956)IILLJ273Bom

Judge : P.D. Sawarkar, J.

Acts : [Industrial Disputes Act, 1947](#) - Sections 12 and 12(5)

Appeal No. : Ref. (I.T.) No. 153 of 1955

Appellant : islampur Municipality

Respondent : their Workmen

Judgement :

Acts/Rules/Orders:

[Industrial Disputes Act, 1947](#) - Section 12 and 12(5)

AWARD

1. This industrial dispute between the Islampur municipality, Urun-Islampur, and the workmen employed under it was referred to me for adjudication under S. 12(5) of the [Industrial Disputes Act, 1947](#), by Government of Bombay, Development Department order No. AJU/1335, dated 27 October 1955.

* * *

2. In Para. 3 of the written statement the following preliminary objection to the maintainability of the reference is taken :-

'The order No. AJU/1355 of the Development Department dated 27 October 1955 referring the dispute between the Islampur municipality and the workmen employed under it for adjudication to the tribunal under Sub-section (5) of S. 12 of the Industrial Disputes Act is not wholly legal and valid and the municipality submits that part of it is without jurisdiction and ultra vires. The municipality does not know as to which type of employees in the different branches of work connected with the municipality have submitted demands to the tribunal through the Nagar Palika Kumgar Union, Sangli. The union is not prepared to disclose this information to the municipality, nor is the union prepared to disclose the names of the employees who have submitted their demands for adjudication. The Government can refer under S. 12 of the Industrial Disputes Act only that dispute which arises between the municipality and its employees in branches of work that can be said to be analogous to the carrying out of a trade or business. The union has made demand with regard to all the employees under the municipality and has not restricted the demand with regard to those employees who can be called workmen carrying out a trade or business. The tribunal therefore cannot exercise jurisdiction with regard to all the employees under the Industrial Disputes Act and the reference of dispute with regard to all the employees of the municipality for adjudication to the tribunal is therefore invalid and without jurisdiction.'

3. Sri Diwan's argument was that all the employees of the municipality cannot be included in the reference because some of these might not be 'workmen' as that work is defined in the Act. I requested Sri Diwan to state precisely who according to him could not be covered by the reference. He submitted a list at Ex. C. 1 and has excluded one executive officer, one head clerk, one suboverseer, one inspector, 4 clerks and 16 Naka Karkuns from the reference. In support of his argument Sri Diwan referred me to the case of the Budge Budge Municipality 1953 I L.L.J. 195 decided by five Judges of the Supreme Court. And Sri Diwan read only the following concluding portion of their lordships' judgment :-

(P. 202) 'Having regard to the definitions found in our Act, the aim or objective that the legislature had in view, and the nature, variety and the range of disputes that occur between employers and employees, we are forced to the conclusion that the definitions in our Act include also disputes that might arise between municipalities and their employees in branches of work that can be said to be analogous to the carrying out of trade or business.'

4. From these observations Sri Diwan wanted to urge that the administrative or public works or collection departments of the municipality could not be said to be analogous to any trade or business and that therefore employees working in those departments could not raise an industrial dispute which could be adjudicated upon by tribunals.

5. Ingenious though Sri Diwan's argument has been, I am not able to appreciate it. Their lordships of the Supreme Court never intended to exclude any department of the municipality from the application of the Industrial Disputes Act. I take the liberty of quoting several passages from their lordships' judgment. The point at dispute was :

(P. 197) 'that the municipality in discharging its normal duties connected with local self-government is not engaged in any industry as defined in the Act.'

6. Their lordships therefore considered the various relevant definitions in the Act and also the commonplace meaning of the words 'industry,' 'trade,' 'business,' 'undertaking' and observed (p. 198) :

'It is obvious that the limited concept of what an industry meant in early times must now yield place to an enormously wider concept so as to take in various and varied forms of industry, so that disputes arising in connexion with them might be settled quickly without much dislocation and disorganization of the needs of society and in a manner more adapted to conciliation and settlement than a determination of the respective rights and liabilities according to strict legal procedure and principles. The conflicts between capital and labour have now to be determined more from the standpoint of status than of contract.'

7. Then their lordships directed their attention to the definition of the word 'industry' and particularly to the word 'undertaking' in that definition and observed :-

'Though the word 'undertaking' in the definition of 'industry' is wedged in between business and trade on the one hand and manufacture on the other and therefore it might mean only a business or trade undertaking, still it must be remembered that if that were so, there was no need to use the word separately from business or trade ... The definition was apparently intended to include within its scope what might not strictly be called a trade or business venture.'

8. To the usual argument that where there is no intention whatever to make profit out of a venture that venture cannot be called an industry and that consequently disputes arising in that venture cannot be called industrial disputes, their lordships by way of an answer quoted from the judgment in *Federated Municipal and Shire Council Employees' Union of Australia v. Melbourne Corporation* 28 C.L.R. 508; -

(P. 201) 'The question of profit-making may be important from an income-tax point of view, as in many municipal cases in England; but from an industrial dispute point of view, it cannot matter whether the expenditure is met by fares from passengers or from rates.'

9. It will thus be seen that their lordships did not restrict the meaning of the word 'undertaking' to only something which is analogous to trade or business as those words are ordinarily understood to mean. An undertaking might be an undertaking to run a charitable hospital or to keep a town clean or to supply the inhabitants of a town with light and water or to protect their property from fire. All these undertakings, whether run for profit or for social service, fall within the definition of the word 'industry.' And whenever a dispute between an employer and his employees in any of these undertakings arises, it must be regarded as an industrial dispute which Government can refer for the adjudication of an industrial tribunal. No doubt, such of the employees as do not fall within the definition of the word 'workman' would not be affected by the award in this reference. Such persons in my opinion would be the executive officer, the sub-overseer and the inspector but certainly not the head clerk or clerks or naka karkuns. They are all persons doing clerical work and clearly fall within the definition of 'workman'. The

preliminary objection raised by the municipality therefore is overruled.

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