

The Management of Madras Vs. the Workmen of Madras and anr.

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Court : Chennai

Decided On : Apr-20-1971

Reported in : (1972)1MLJ117

Appellant : The Management of Madras

Respondent : The Workmen of Madras and anr.

Judgement :

K. Veeraswami, C.J.

1. The appeal arises from an order of Kailasam, J., holding that the appellant, the Madras Pinjrapole, was an industry within the meaning of the Industrial Disputes Act. The petition was to quash an award of the Presiding Officer, Additional Labour Court, Madras. At the instance of some of the employees of the Madras Pinjrapole, the State Government, by an order, dated 22nd September, 1958, made a reference to the Presiding Officer for adjudication of four issues relating to fixation of scales of pay, quantum of dearness allowance, termination of the services of certain workmen and computation of relief in terms of money, if it could be so computed. A preliminary issue was raised whether the Pinjrapole was an industry in order to view the dispute as an industrial dispute. On that issue, the Presiding Officer held that having regard to the wide and comprehensive import of the definition of the word 'industry' in the Act and the evidence on record read with the decided cases, the Pinjrapole could be considered to be an industry and the dispute referred an industrial dispute. Kailasam, J., upheld this view and dismissed

the petition. Since this order of the learned Judge has come Management, Safdarjung Hospital v. Kuldip Singh Sethi : (1970)IILLJ266SC which has in our view, considerably changed the approach to the scope of the definition of industry in the Act. In the light of this decision, the question whether the Pinjrapole is an industry has to be considered.

2. The Madras Pinjrapole was founded in 1906. The institution was originally called the Madras Pinjrapole and the main objective of the Pinjrapole was to save, as far as possible, the lives of old and infirm cows, bullocks, horses etc., from being slaughtered and from the hands of hackney carriage drivers as the case might be, owing to the inability or unwillingness of their owners to maintain them when they became old or useless and take care of and feed them until they died a natural death. The foundation of the Society was laid by no less a person than the then Governor Sir Arthur Lawley and Mr. Justice H.T. Boddam. The Society for the Prevention of Cruelty to Animals had conceived of this idea and it was under its auspices the Pinjrapole came into existence. The Governor in his foundation speech mentioned that the society so founded not only respected the religious scruples of others, but it Was also willing to give effect to the wishes which they might express and it was expected that the institution would be a corollary to the work of the Society for the Prevention of Cruelty to Animals. The object of the society so expressed by the founders was obviously not a commercial or a business enterprise, but it was conceived in the basic sympathy for life and its struggle, especially in the light of the religious scruples of a large number of the community in respect of animals, more especially the cow. But on 23rd January, 1937, an amendment was resolved upon to the effect that the object of saving the lives of old and infirm cows, bullocks, horses etc., should be extended also to cover dry cows, which were not necessarily old and infirm, On 21st July, 1950, the Madras Pinjrapole was registered in that name as a society under the Societies Registration Act, 1860. The Memorandum of the society expressed its object as the protection, care and treatment of old, infirm and injured cows, calves, bullocks, horses etc., and affording freedom to such animals from being slaughtered unnecessarily and to guarantee old age relief till death to old, infirm and unusable animals. The means to be employed to achieve that objective were described as the maintenance of a shelter house for aged, worn-out and unserviceable animals,

the feeding and treatment of all animals entrusted to its care either by owners anxious to pension their old animals or rescued by philanthropic persons from the hands of butchers and the protection of animals remanded by the Magistrates, the breeding of bulls under ideal and sanitary conditions, the maintenance of a dairy farm with special attention being paid to proper feeding, accommodation and water supply the proceeds of which would go to the benefit of the other animals of the Pinjrapole and the bringing up of the calves of the young cows under healthy conditions. Judges and retired Judges and other eminent persons have been Chairmen of the society from its registration. As we said, even before its registration as a society, the Pinjrapole was associated with very eminent men. Having regard to the objective mentioned above and the means adopted to give effect to it, we can hardly say that the activity contemplated by the Pinjrapole was an industry in any sense of the term and it would clearly not be within the scope of the Industrial Disputes Act and would not be an industry as defined therein.

3. From the annual reports and other records it appeared that the Pinjrapole maintained a dairy farm with young cows and stud bulls, selling the milk and with the proceeds maintaining the Pinjrapole. The maintenance of a dairy farm, was one of the means suggested in the memorandum of the society itself to carry out the objective, which was more humanitarian and altruistic than conceived as commercial, trading or business enterprise. The maintenance of a dairy farm was, therefore, incidental to the carrying out of the objective of the society. The activity, as brought out from the annual reports and other papers relating to the maintenance of the dairy farm, in our view, does not convert the society into an industry. It is true that the expression industry had received a very wide interpretation in the earlier decided cases and the view had gone so far as to hold that even hospitals in certain circumstances could be regarded as industry within the fold of the Industrial Disputes Act. But *Management, Safdarjung Hospital v. Kuldip Singh Sethi* : (1970) IILLJ266SC , appears to strike a retreat, if we may say so with due respect, from the earlier conception of industry for the purpose of the Act. All the earlier decisions relevant were reviewed in that case and it was held that

The first part of the definition of the term 'industry' relates to the employers while the second part, the workmen. The word industry must take its colour from the definition itself. A workman is to be regarded as one employed in an industry if he follows one of the avocations mentioned in the second part of the definition in conjunction with his employers engaged in the vocations mentioned in the first part of the definition. The word 'trade' even though it is of widest amplitude as used in the statute must be distinguished from professions although professions have trade unions. So also the term 'business' is of wide amplitude. These words have definite economic content to the exclusion of professions but are concerned with the production, distribution and consumption of wealth and the production and availability of material services...Before an industrial dispute as defined under Section 2(k) is raised the relationship of employers and employees must be first established associating together, the former following trade, business, manufacture, undertaking or calling of employers in the production of material goods and material services and the latter following any calling, service, employment, handicrafts or industrial occupation or avocation of workmen in aid of the employers' enterprise which may or may not have profit motive but which is analogous to trade or business in a commercial sense.

To see whether an enterprise or activity is industrial in character as defined in the Industrial Disputes Act, the matter should be looked at both from the standpoint of employer and the employee and there must be a relationship between the two so far as the activity meant by the employer and carried out by the employee is concerned. The very term 'industry' has been defined by Section 2(j) as any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The governing feature of an industry is that it should be of a commercial character. Absence of profit motive, of course, is not decisive. In fact, such a motive is not the essence of an activity in a commercial sense. Each of these concepts, to wit, business, trade and undertaking, is of wide import and so too manufacture. But what it means and its limits are can be easily understood once it is borne in mind that the activity should be of a commercial character. Can we say that the activity of the Pinjrapole is of that character? In our opinion, it is not. It has been pressed upon us that when young much cows are maintained and

the milk is sold making a large turnover in a year, that by itself would indicate that the activity is of a commercial character. But the argument takes the activity of the Pinjrapole out of its context and the real objective of the society, which is far from commercial. The dairy farm, small as it is, adopted as a means to give effect to the objective of the society is not the object of the society which is non-commercial and in fact is founded on religious sentiments of the community to preserve and maintain old and infirm cows. In fact, there is nothing to suggest in Clause 4 of the memorandum of the I society that a dairy farm would be maintained with young milch cows. The amendment made to the old objective by a resolution of 1937 has not been carried into the memorandum of articles of the society as registered.

4. On the whole, we are satisfied that the Madras Pinjrapole is not an industry within the definition of that expression in the Industrial Disputes Act. The appeal is allowed. The reference to the Presiding Officer is quashed. No costs.

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