The Management of Hospitals, Orissa

Vs

Their Class Iv Employees, and Director of Health Services, Orissa & their Workers

Civil Appeals Nos. 76 to 78 of 1970

(V. Bhargava, I. D. Dua JJ)

24.03.1971

JUDGMENT

BHARGAVA, J. -

1. These three appeals by special leave challenge two awards passed by the Industrial Tribunal, Orissa in three references made by the Orissa Government under Section 10(1) of the Industrial Disputes Act No. 14 of 1947 (hereinafter referred to as "the Act"). The first two references, out of which Civil Appeals Nos. 76 and 77 of 1970 arise, related to various conditions of service of Class IV employees employed in different hospitals owned and run by the State Government. The third reference, which has given rise to Civil Appeal No. 78 of 1970, similarly related to conditions of service of employees employed in the T.B. Wards and the X-ray Therapy Section in different hospitals, sanatorium and infectious Wards of various medical units owned and run by the State Government. In all these references, one of the grounds raised on behalf of the management of the hospitals, or the Director of Health Services, Orissa, was that a hospital run by the Government is not an 'industry' within the meaning of Section 2(j) of the Act and that the employees of the Government posted for the time being in such hospitals cannot be held to be workmen within the meaning of Section 2(s) of the Act. It was urged that therefore, there were no industrial disputes within the meaning of Section 2(k) of the Act and the references made by the Government were illegal and invalid. The references, besides these Government hospitals, also related to some other institutions; but we are not concerned in these appeals with those institutions, as the Tribunal itself refused to give an award in respect of the employees of those institutions. The Tribunal, however, held that these hospitals, sanatoriums and infectious wards of medical units, to which these references related, were covered by the definition of "industry" in the Act and, thereupon, proceeded to deal with the conditions of service on merits. The Tribunal, thus overruled the preliminary objections raised on behalf of the appellants. The appellants in these appeals again challenged the correctness of the Tribunal's view that these hospitals and other institutions owned and run by the Government could be held to be 'industries' under the Act, besides challenging the awards on merits. We have heard Counsel for parties on this question as a preliminary point in view of a recent decision of this Court which appears to us to be fully applicable.

2. At the time when the Tribunal gave the awards, the view of this Court which was prevailing was that expressed in State of Bombay and Others v. The Hospital Mazdoor Sabha and Others. ((1960) 2 SCR 866 : AIR 1960 SC 610 : 1960 SCJ 679) In that case it was held that a hospital is an industry. Before the Tribunal, it was urged that that decision had been impliedly overruled by this Court in Secretary, Madras Gymkhana Club Employees Union v. Management of the Gymkhana Club. ((1968) 2 SCR 742 : AIR 1968 SC 554 : (1968) 2 SCJ 138) The Tribunal rightly held that the latter case had not overruled the former, though if did cast a little doubt on its correctness by stating that

the decision in the former case may be said to be on the verge on the question as to what institutions can be held to be 'industries' under the Act. However, since then, a larger bench of this Court has clearly laid down that a hospital run by the Government cannot be held to be an 'industry' under the Act and explained what facts have to be proved to exist before a hospital can be held to be an industry. That decision is in the Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi, ((1970) 1 SCC 735) and other connected cases. In dealing with the Hospital Mazdoor Sabha case (supra) the Court said :

> "We may now consider closely the Hospital Mazdoor Sabha case (supra) and the reasons for which it was held that the workmen employed in a hospital were entitled to raise an industrial dispute. We may say at once that if a hospital, nursing home or dispensary is run as a business in a commercial way there may be found elements of an industry there. Then the hospital is more than a place where persons can get treated for their ailment. It becomes a business."

Having thus enunciated when a hospital, nursing home or dispensary may be held to be an industry, the Court proceeded to examine in detail the principle laid down in the Hospital Mazdoor Sabha case (supra) an held that it had taken an extreme view of the matter which was not justified. Therefore, applying the principle to the Safdarjung Hospital in New Delhi run by the Government, the Court held it not to be an industry in the following words :

> "It is obvious that Safdarjung Hospital is not embarked on an economic activity which can be said to be analogous to trade or business. There is no evidence that it is more than a place where persons can get treated. This is a part of the functions of Government and the hospital is run as a Department of Government. It cannot, therefore, be said to be an industry."

This principle clearly applies to all the hospitals and institutions the employees of which were the subject-matter of the present three references before the Tribunal. All these are institutions run by the Government and they are no more than places where persons can get treated. They are being run as a part of the function of the Government of Orissa and were being run as departments of Government. Consequently, the principle laid down in the Safdarjung Hospital case (supra) is fully applicable and negatives the contention of the workmen that these references were competent.

3. Learned Counsel appearing for the respondent-workmen, however, urged two aspects before us in support of his submission that the Safdarjung Hospital case (supra) should not be held to be applicable to these appeals before us. One aspect was that there was a finding by the Tribunal that some or these hospitals have paid beds where patients coming for treatment have to make payment for occupying the beds. On this account it should be held that these hospitals were being run in a commercial way. The mere fact that payment is accepted in respect of some beds cannot lead to the interference that the hospitals are run as a business in a commercial way. Primarily, the hospitals are meant as free service by the Government to the patients without any profit motive. It may be mentioned that, connected with the case of the Safdarjung Hospital, was the case of Tuberculosis Hospital which was a part of the Tuberculosis Association of India. In that Hospital, there were beds for which payment was accepted, as well as beds which could be occupied without any payment. The Court still held that that Hospital could not be held to be an industry. The existence of a few paid beds, thus, does not make any difference.

4. The second aspect urged learned Counsel was that in this case the respondent-workmen did not

have a proper opportunity to led evidence to show that these hospitals were being run as a business in a commercial way, and made a request that we may remand this case to the Tribunal for giving an opportunity to the workmen to lead evidence on this point. We do not think that this is a fit case where an order of remand should now be made. The hospitals run by the Orissa Government are exactly similar in nature to the Safdarjung Hospital run by the Central Government in New Delhi. The decision of this Court in the Safdarjung Hospital case (supra) is, therefore, fully applicable and no useful purpose can be served by an order of remand.

5. The appeals are, consequently, allowed and the awards of the Tribunal are set aside on the ground that the references to the Tribunal made by the Government under Section 10(1)(d) of the Act were incompetent. We leave parties to bear their own costs.

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