The Dhanrajgirji Hospital

Vs

The Workmen

Civil Appeal No. 1837 (NL) of 1969

(A. Alagiriswami, N.L. Untwalia JJ)

19.08.1975

JUDGMENT

UNTWALIA, J. -

1. An industrial dispute was raised by the Medical College and Sholapur Hospital Staff Union on behalf of the employees of the Dhanrajgirji Hospital - the appellant in this appeal by special leave. It was referred for adjudication by the Government of Maharashtra to the Industrial Tribunal, Bombay. A preliminary objection was taken on behalf of the appellant as respects the maintainability of the reference on the ground that the dispute raised did not pertain to any industry and hence was not an industrial dispute which could be made the subject-matter of the reference. The Tribunal by its impugned order dated the 18th February, 1969 decided the preliminary issue against the appellant the directed the reference to be heard on merits. The appellant hospital assails that order in this appeal.

2. The Tribunal did not consider the materials placed before it fully in support of the finding that the appellant is engaged in an industry within the meaning of the Industrial Disputes Act, 1947. Even so, the finding recorded by it is that the activities of the appellant are not mainly educational but the hospital was establishment in 1930 for the benefit of the public of Solapur and its main function is to look after the patients availing of the facilities afforded by the hospital. This finding is chiefly based upon the terms of the Trust Deed by which the creator of the Trust had established the hospital. The finding recorded by the Tribunal is in these words :

It is thus clear that the primary object of creating the Trust in to provide medical relief to the public of Sholapur and that educational activities undertaken by it later are ancillary. The hospital, no doubt, imparts some training and education during the course of its usual activities of giving medical relief to the public of Sholapur but these additional activities cannot turn it into a purely educational institution not doing any industrial activity.

Distinguishing the decision of this Court in Secretary, Madras Gymkhana Club Employees Union v. Management of the Gymkhana Club ((1968) 1 SCR 742 : AIR 1968 SC 554 : (1967) 2 LLJ 720) it has held that the activities carried on by the hospital amount of an industry and attract the provisions of Industrial Disputes Act.

3. Although the hearing of this appeal proceeded ex parte as the workmen were not represented, we examined the matter with the care with the assistance of the learned counsel for the appellant In our judgment even on the findings of primary facts recorded by the Tribunal the ratio of the decision of this Court in Management of Safdarjung Hospital, New Delhi v. Kuldip Singh, Sethi ((1971) 1 SCR

177 : (1970) 1 SCC 735) squarely applies to this case. Following the said decision the appeal has got to be allowed. We shall, however, point out some more materials from the records of this case to further fortify our conclusions.

4. In Safdarjung Hospital case (supra) the decision of this Court in the case of State of Bombay v. Hospital Mazdoor Sabha ((1960) 2 SCR 866 : AIR 1960 SC 610 : (1960) 1 LLJ 251) was dissented from and held to be not laying down the law correctly. The Madras Gymkhana Club case (supra) was also considered and approved; but some observations quoted at page 184 [SCC p. 741, paras 10-11] from that decision were somewhat qualified. The two parts of the definition of the word "industry" gives in clause (i) of Section 2 of the Industrial Disputes Act were read as a whole to denote a collective enterprise in which employers and employees are associated and it was further said at page 184 : [SCC p. 741, para 12]

It does not exist either by employers alone or by employees alone. It exists only when there is a relationship between employers and employees, the former engaged in business, trade, undertaking, manufacture or calling of employers and the latter engaged in any calling, service, employment, handicraft or industrial occupation or avocation. These must, therefore, be an enterprise in which the employers follow their avocations as detailed in the definition and employ workmen who follow one of the avocations detailed for workmen. The definition no doubt seeks to define 'industry' with reference to employers' occupation but includes the employees, for without the two there can be no industry. An industry is only to be found when there are employers and employee, the former relying upon the services of the latter to fulfil their own occupation.

After consideration of some more decision the law enunciated at page 188 is in these terms : [SCC p. 744, para 21]

It therefore, follows that before an industrial dispute can be raised between employers and their employees or between employers and employers or between employees and employment in relation to the employment or non-employment or the terms of employment or with the conditions of labour of any person, there must be first established a relationship of employers and employees associating together the former following a trade, business, manufacture, undertaking or calling of employers in the production of material goods and material service and the later following any calling, services, employment, handicraft, or industrial occupation or avocation of workmen in aid of the employers' enterprise. It is not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in a commercial sense.

By closely examining the Hospital Mazdoor Sabha case, Hidayatullah, C.J., delivering the judgment on behalf of the Bench of 6 Judges hastened to add at page 189 : [SCC p. 745, para 23]

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.

5. In the light of the principles enunciated the cases of the three hospitals which were under consideration were separately examined. Apropos the case of Safdarjung Hospital it was said that it did not embark on an economic activity which would be said to be analogous to trade or business. There was no evidence that it was more than a place where persons could get treated. Similarly, in the case of Tuberculosis Hospital, it was found that it was wholly charitable and a research institute. The dominant purpose of the Hospital was research and training and the Hospital was run for aiding

the said activity. In case of Kurji Holy Family Hospital also it was noted that it carried on work of training, research and treatment. Its income was mostly from donations. None of the three hospitals was held to be carrying on an industry.

6. As we have said above even on the findings recorded by the Tribunal the appellant was not carrying on any economic activity in the nature of trade or business. It was not rendering any material services by bringing in any element of trade or business in its activity. We may refer to some materials in the records to justify this conclusion.

7. In paragraph 7 of the written statement of the appellant filed before the Tribunal the workmen's statement that the hospital was self-supporting was strongly contradicted and it was asserted that the hospital had to incur loan for day to day affairs to the tune of Rs. 300,000 and odd. The State Government of Maharashtra had sanctioned Rs. 25,000 to meet the deficit in the fiances. According to the affidavit of Dr. M. V. Mulay who was cross-examined also by the workmen the main activity of the hospital began by imparting training in general nursing and midwifery. There were quite a good number of trainess and the beds in the hospital were meant for their practical training. In cross-examination Dr. Mulay stated that the Central Government gave a grant of Rs. 83.50 per trainee but that was not enough to meet the expenses. He further said that the hospital is not distinct or separate from the training nurses. The parients are charged according to their financial condition and there is no regular charges fixed for a patient.

Even in the deed of trust the settlor while creating a charitable trust said that the hospital was to be maintained for the public of Sholapur and the trustees may do any and all other acts which might be beneficial for maintaining and running the said hospital to the best advantage of the public of Solapur.

8. Taking into consideration the entire facts and circumstances of this case we have no doubt in our mind that on application of the principles of law enunciated by this Court in the case of Safdarjung Hospital (supra) it must be held that the appellant is not engaged in any industry within the meaning of the Industrial Disputes Act. The Tribunal committed an error of law in holding to the contrary. The reference, therefore, was incompetent.

9. For the reasons stated above, we allow this appeal, set aside the order of the Tribunal and direct it to file the reference as being incompetent. No costs.

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