SUPREME COURT OF INDIA

HUSSAN MITHU MHASVADKAR

Vs.

BOMBAY IRON & STEEL LABOUR BOARD & ANR.

07/09/2001

(S. Rajendra Babu & Doraiswamy Raju)

Appeal (civil) 11189 of 1995

JUDGMENT

Raju, J.

The two important questions that are put in issue in this appeal are as to:

a) Whether the Bombay Iron & Steal Labour Board constituted under the provisions of the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 hereinafter referred to as the Act, falls within the definition of Industry within the meaning of Section 2 (j) of the Industrial Disputes Act, 1947; and

b) Whether the appellant, appointed and working at the relevant point of time as an Inspector, discharging duties, powers and obligations envisaged under Section 15 answers the description of workman as defined in Section 2 (s) of the I.D. Act, 1947.

The appellant was working as an Inspector in the Bombay Iron & Steel Labour Board [hereinafter referred to as the Board] from 13.3.79, having been appointed as such on 10.3.79. On such appointment, the appellant was placed on probation for a period of three months and after putting in a service of 21 months, an order of termination came to be made on 17.12.80. According to the appellant, he was doing the work of supervision, detection of defaulters, other work of clerical nature, maintenance of registers, files, preparation of reports etc., On a dispute being raised, a reference was made under Section 10 (1) and Section 12 (5) of the I.D. Act, to the First Labour Court, Bombay, for adjudication. By an Award dated 18.7.86, the reference was rejected as not maintainable, on the findings recorded that the Board is not an Industry and since the appellant was not employed in an Industry, he cannot fall within the definition of workman, though the Labour Court also recorded a finding that the appellant was not a workman. It was also found by the Labour Court that the appellant could not claim any automatic or deemed confirmation and that being only a probationer his services were dispensed with on being found not suitable for the post of Inspector.

The appellant pursued the matter by way of a Writ Petition before the learned Single Judge as also an appeal before a Division Bench of the Bombay High Court unsuccessfully, resulting in the filing of this appeal. Heard Ms. Indira Jaising, learned senior counsel for the appellant and Mr. S.S. Naphde, Senior Advocate, for the respondents. Strong reliance has been placed upon the decision of this Court reported in Bangalore Water Supply and Sewerage Board, etc. vs A. Rajappa and Others, etc. [(1978) 2 SCC 213], besides inviting our attention to the decisions reported in D.N. Banerji vs

P.R. Mukherjee and Others [1953 SCR 302 = AIR 1953 SC 58]; The Corporation of the City of Nagpur vs Its employees and others [1960 (2) SCR 942 = AIR 1960 SC 675]; Vizagapatnam Dock Labour Board vs Stevedores Association, Vishakhapatnam and Others [1971 (1) SCR 177 = AIR 1970 SC 1626]; H.R. Adyanthaya and Others vs Sandoz (India) Ltd. and Others [1994) 5 SCC 737] and that of a learned Single Judge of the Andhra Pradesh High Court in Management of Dock Labour Board, Viskhapatnam vs Industrial Tribunal & Anr. [1996 (1) Labour Law Journal 5].

The learned senior counsel for the appellant strenuously contended that after the decision of this Court in Bangalore Water Supply & Sewerage Boards case (supra), it would be futile for anyone either to contend or countenance the plea that the Board in question is not an industry so as to attract the provisions of the I.D. Act and that the High Court should have held in favour of the appellant on this issue and remitted the matter to the Labour Court for an adjudication on merits of the claim as to whether the appellant was a workman or not, since the Labour Court has chosen to record a finding on the claim of the appellant as workman, against him solely on the ground that he was not employed in any industry within the meaning of Section 2 (j) of the I.D. Act. The learned senior counsel for the respondent, with equal vehemence, urged that the Labour Court and the High Court (the learned Single Judge as well as the Division Bench) had made a thorough examination of the facts of the case in the light of the correct and relevant principles of law governing the matter and rightly rejected the claim of the appellant, for cogent and convincing reasons and that, therefore, no interference is called for in this appeal at the instance of the appellant. Our attention was also drawn to the provisions of the Act and the scheme framed for the protection of Bombay Iron & Steel unprotected workers.

On a careful consideration of the respective submissions of the learned counsel on either side, we are of the view that in a case of the nature where the Labour Court as well as the High Court entertained doubts about the status of the appellant as a workman within the meaning of Section 2(s) of the I.D. Act, instead of embarking upon an adjudication in the first instance as to whether the respondent-Board is an Industry or not so as to attract the provisions of the Industrial Disputes Act, ought to have refrained from doing so and taken up the question about the status of the appellant for adjudication at the threshold and if only the finding recorded was against the appellant refrained from adjudicating on the larger issue affecting the various kinds of other employees, as to the character of the Board, as an industry or not. The larger issue should have been entertained for consideration only in a case where it is absolutely necessary and not when the claim before it could have been disposed of otherwise without going into the nature and character of the Undertaking itself. For the said reason and also having regard to the submission made by the learned senior counsel for the respondents itself that the question as to whether the appellant falls within the definition of `workman may itself be considered on the supposition that the Board is an industry, we propose to deal with the status of the appellant as to whether he is a workman or not at the first instance and if necessitated on account of our decision on that issue, undertake the larger issue for our consideration and decision. The question as to what constitutes an industry for the purposes of the Industrial Disputes Act and what are those Undertakings or Establishments or activities, which answer the definition of `industry in Section 2(j), has been laid down authoritatively in several decisions of this Court, including the one in the Bangalore Water Supply and Sewerage Board case (supra) and what remains is to apply to individual cases, the principles laid down therein to adjudge the character of the activity or an undertaking or institution in a given case on the touchstone of the principles laid down therein. In view of this position in law, it becomes all the more necessary to first undertake an adjudication of the question as to status of the appellant.

The appellant indisputably was appointed and was working, at the relevant point of time, as an

Inspector as envisaged under Section 15 to exercise powers conferred upon and duties and obligations enjoined on him under Section 15 of the Act. It is useful to extract the said provision, which reads as hereunder :-

15. (1) The Board may appoint such persons as it thinks fit to be Inspectors possessing the prescribed qualifications for the purposes of this Act or of any scheme and may define the limits of their jurisdiction.

(2) Subject to any rules made by the State Government in this behalf, an Inspector may

(a) enter and search at all reasonable hours, with such assistants as he thinks fit, any premises or place, where unprotected workers are employed, or work is given out to unprotected workers in any scheduled employment, for the purpose of examining any register, record of wages or notices required to be kept or exhibited under any scheme, and require the production thereof, for inspection;

(b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an unprotected worker employed therein or an unprotected worker to whom work is given out therein;

(c) require any person giving any work to an unprotected worker or to a group of unprotected workers to give any information, which is in his power to give, in respect of the names and addresses of the persons to whom the work is given, and in respect of payments made, or to be made, for the said work;

(d) seize or take copies of such registers, records of wages or notices or portions thereof, as he may consider relevant, in respect of an offence under this Act or scheme, which he has reason to believe has been committed by an employer; and

(e) exercise such other powers as may be prescribed:

Provided that, no one shall be required under the provisions of this section to answer any question or make any statement tending to incriminate himself.

(3) Every Inspector appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Section 17B of the Act mandates that no Labour Court shall take cognizance of any offence punishable by or under the Act, except on a complaint in writing made by an Inspector or by a person specially authorized in this behalf by the Board or the State Government. Section 20 enables the Inspector appointed under the Act to be notified for being deemed to be the Inspector for the purpose of enforcement of the provisions of the Maternity Benefit Act, 1961. Section 3 of the Act empowers the Statement Government to frame a scheme providing for registration of employers and unprotected workers in any scheduled employment or employments, and provide for regulating the terms and conditions of work of registered unprotected workers and also make provision for the general welfare in such employments and that as a matter of fact for the class or category of workers in question, a scheme known as Bombay Iron & Steel Unprotected Workers (Regulation of Employment and Welfare) Scheme, 1970 came to be made and duly published.

The first issue out of the total number of five issues formulated by the Labour Court in this case as

to whether the appellant was not a workman under Section 2 (s) of the Industrial Disputes Act, was answered in the affirmative and against the appellant. In reaching this conclusion after adverting to the materials placed on record the Labour Court stated as follows:

.Hence, on facts, it can be said that Mr. Mhasvadkar has not stated any clerical duties except those of writing the registers. On the contrary, he has admitted his main duty is to prosecute the employers. Under these circumstances, it cannot be said that the Inspector appointed under the Mathadi Act is doing the clerical work mainly. He may be required to do some writing work but that is not the main duty of Mr. MhasvadkarOn facts, I do not agree with the argument of the learned advocate for Mr. Mhasvadkar that his duties were of clerical nature. [para 13]

This finding of fact recorded by the Labour Court was affirmed by the learned Single Judge who stated, I also uphold the finding of the First Labour Court that the petitioner is not a workman. [para 16] In spite of all these, it cannot be stated that this aspect was not considered by the Labour Court or by the High Court in the writ petition and, there is any need or justification for this Court to direct the Labour Court or High Court, to go in to and decide this question, once over again.

No doubt, in deciding about the status of an employee, his designation alone cannot be said to be decisive and what really should go into consideration is the nature of his duties and the powers conferred upon as well as the functions assigned to him. Even if the whole Undertaking be an Industry, those who are not workmen by definition may not be benefited by the said status. It is the predominant nature of the services that will be the true and proper test. Operations of the Government which are pure and simpliciter administrative and of Governmental character or incidental thereto cannot be characterized to be industrial in nature, be it performed by a department of the Government or by a specially constituted statutory body to whom anyone or more of such functions are delegated or entrusted with. When, as in this case, as disclosed from Section 15 of the Act as also the provisions of the scheme, the primary duties of an employee and the dominant purpose, aim and object of employment was to carry out only certain specific statutory duties in the matter of effective enforcement and implementation of the welfare scheme in order to ameliorate and rehabilitate a particular cross section of labour, and, if need be, on the basis of his own decision which calls for an high degree of discretion and exercise of power to prosecute the violator of the provisions of the Act, Rules and the provisions of the scheme, we are unable to accord our approval to the claim made on behalf of the appellant that he can yet be assigned the status of a workman, without doing violence to the language of Section 2 (s) and the very purpose and object of the I.D. Act, 1947. That apart, even judging from the nature of powers and the manner of its exercise by an Inspector, appointed under the Act, in our view, the appellant cannot be considered to be engaged in doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work and the mere fact that in the course of performing his duties he had to also maintain, incidentally, records to evidence the duties performed by him, day-to-day, cannot result in the conversion of the post of Inspector into any one of those nature noticed above, without which, as held by a Constitution Bench of this Court in the decision in H.R. Adyanthayas case (supra), the appellant cannot fall within the definition of `workman. The powers of Inspector and duties and obligations cast upon him as such are identical and akin to law enforcing agency or authority and also on par with a prosecuting agency in the public law field.

Consequently, we find no error in the ultimate decision of the High Court denying relief to the appellant. In view of this, we are not called upon to decide the larger issue and the said question is left open for consideration in an appropriate case, as and when found to be necessary. The appeal fails and shall stand dismissed. No costs.