

CALCUTTA HIGH COURT

Carlsbad Mineral Water Mfg. Co

Vs

P.K. Sarkar

(Harries, C.J. Das, J.)

09.05.1951

JUDGMENT

Harries, C.J.

1. This is an appeal from a judgment and order of Banerjee J. dated December 19, 1949 dismissing an application for a 'mandamus' or a writ of 'certiorari'.

2. The appellants are a limited company who manufacture soda water and on January 3, 1947 they entered into an agreement with the Governor-General in Council acting through the Chief Commercial Manager of the East Indian Railway Administration in Calcutta by which they secured the catering rights of providing mineral waters on the East Indian Railway system. By the agreement, they acquired a right to sell their mineral waters on the stations of the East Indian Railway and on the trains running on that railway and under the contract the Government had a right to fix maximum prices and to control to some extent the work of the appellants.

3. A trade dispute occurred between the appellants and their workmen and the Government of West Bengal by its order dated December 28, 1948 referred this dispute for adjudication by Mr. P. K. Sarkar. An application was made to this Court for a writ of 'mandamus' or 'certiorari' on the ground that this was a dispute which could not be referred for adjudication by the Government of West Bengal. It was suggested that the dispute could only be referred to for adjudication under the Industrial Disputes Act by the Central Government as the appellants were carrying on business by authority of the Central Government.

4. Section 10(1) of the Industrial Disputes Act provides:

"If any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing,

(c) refer the dispute to a Tribunal for adjudication."

"Appropriate Government" is defined in Section 2(a)(i) as meaning:

"in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, by the Federal Authority or by a railway company operating a Federal Railway or in relation to an industrial dispute concerning a mine, oilfield, or a major

port, the Central Government, and

(ii) in relation to any other industrial dispute, the Provincial Government."

5. The argument of the appellants before Banerjee J. was that the appropriate government to make an order for referring this dispute to adjudication was the Central Government as the dispute concerned an industry carried on by or under the authority of the Central Government.

6. Banerjee J. was of opinion that the business of the appellants was not a business carried on by or under the authority of the Central Government or by any railway.

7. It must be remembered that the Industrial Disputes Act deals with disputes between employers and labour and industries carried on behalf of or on the authority of Government are also dealt with in Section 2(g) of the Industrial Disputes Act in which the word "employer" is explained.

"Employer" means:

"(i) in relation to an industry carried on by or under the authority of any department of a Government in British India, the authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the Chief Executive Officer of that authority."

8. The argument for the appellants is that as the appellants have entered into a contract with the Central Government to provide amenities for railway passengers which the railway would normally be called upon to provide, they are carrying on an industry by the authority of the Government.

9. It seems to me that what is referred to in Section 2(a)(i) and Section 2(g)(i) is any industry owned by Government which is being carried on by Government itself either through a department or by some authority created by Government to carry on that industry. An industry carried on by or under the authority of Government is a Government industry (which as I have said may be carried on directly by [Government or by somebody or person nominated by Government for that purpose. No business own-ed and carried on by a private person or a limited (company can be a business carried on by or under (the authority of Government.

10. It seems to me that the words "under the authority" mean much the same as "on behalf of". It is to be noticed that in Section 2(g)(ii) "employer" means in relation to an industry carried on by or on behalf of a local authority, the Chief Executive Officer of that authority. With regard to such an industry even if somebody has been authorised by the local authority to carry on the work nevertheless the Chief Executive Officer is in all cases to be regarded as the employer.

11 In my view the learned Judge was right in holding that the appellant company was not conducting an industry under or by authority of Government. It was conducting its own business of 'manufacturing and selling soda water and other aerated drinks. For its own benefit it had entered into a contract with Government which gave it the exclusive right of selling these articles on railway stations and trains of the East Indian Railway. It is true that they were doing work which the rail-way would normally perform, but they were doing it not by the authority of the railway. They were doing it as contractors. The business was not the business of the railway which was being conducted by the appellants as the nominated authority of the railway. The

business was the business of the appellants which they were conducting for their own personal profit and benefit. It was in no sense the business of Government and it appears to me that the appellants can in no sense be described as being persons authorised to carry on a Government business. They were licensees of Government under a contract and they were carrying on their own business and not that of Government or of the railway.

12. Mr. Sen Gupta has laid great stress on the fact that by the terms of the contract the Government had the right to control the activities of the appellants in many ways. It must be remembered however that by the contract the appellants were given the exclusive right to sell articles on Government property and it was very natural that Government would see to it that what was sold was wholesome and not too expensive and that the persons employed to sell were respectable persons fit to be allowed on railway stations and in railway trains. 'The nature of the contract required considerable control by the Government, but that would not make the business carried on by the appellants as a business of Government carried on by the appellants by authority of Government. It seems to me quite clear that the employers of the workmen in the soda water factory and indeed in the catering department were the appellants and an industrial dispute would be between the workmen and the appellants. If the business of manufacturing and supplying these mineral water was carried on by authority of Government the workmen would be the workmen of Government. But such obviously is not the case. In my judgment it is quite impossible to hold that the Carlsbad Mineral Water Manufacturing Company Limited is a business carried on by authority of Government. It is a business not owned by Government, but is on the other hand owned by the Carlsbad Mineral Water Manufacturing Company Limited. It is carried on their behalf and for their benefit and any control of Government only arises because of the terms of the contract which this company has entered into with Government a contract which gives them an exclusive right to sell certain articles on railway property. The business or industry is carried on by the appellants and therefore there was an industrial dispute between the appellants who are a limited company in Calcutta and their employees. This could clearly be referred for adjudication by the State Government of West Bengal under Section 10(1)(c) of the Industrial Disputes Act.

13. That being so the petition for a writ of 'mandamus' or 'certiorari' was bound to fail and the petition was rightly dismissed by Banerjee J.

14. The appeal therefore fails and is dismissed with costs. Certified for two Counsel.

Das, J.

15. I agree.