

KERALA HIGH COURT

Indian Naval Canteen Control Board

Vs.

Industrial Tribunal, Ernakulam

Writ Appeal No. 64 of 1964

(M.S. Menon, C.J. and M. Madhavan Nair, J.)

25.02.1965

JUDGMENT

M.S. Menon, C.J.

1. This is an appeal by the petitioner in O. P. No. 347 of 1962. The Secretary, Indian Naval Canteen Control Board, New Delhi against the dismissal of that petition. The petition challenged the validity of a preliminary award of the Industrial Tribunal, Calicut and Ernakulam, in Industrial Dispute No. 33 of 1960.

2. The reference to the Tribunal was by the State Government; and the contention of the appellant which has been negatived both in the preliminary award and the judgment under appeal was that the appropriate Government competent to make the reference under the Industrial Disputes Act, 1947, was not the State Government but the Central Government. The expression "appropriate Government" is defined in Section 2 of the Act. According to that definition the appropriate Government in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government is the Central Government and not the State Government.

3. The sole question for determination, therefore, is whether the Indian Naval Canteen Service, an establishment run by the Indian Naval Canteen Control Board, at the Naval Base on Willingdon Island and whose workmen raised the dispute which has been referred or adjudicated is an industry carried on by or under the authority of the Central Government as contended by the appellant. The constitution of the Indian Naval Canteen Service is Ex. M2 of the exhibits marked by the Tribunal. A perusal of that exhibit leaves no room for doubt that what has been constituted is a trust for carrying out the objects enumerated in Article 2 of that Constitution, and that the establishment with which we are concerned is an establishment commenced and conducted in pursuance of those objects. Article 5 of the Constitution specifically states :

"All property and rights of the Organization shall be vested in the Indian Naval Canteen Control Board constituted as follows and held by it on trust for the objects of the

Organization."

4. We are not prepared to say that an industry carried on by a trust, even though the trust has been constituted by the Central Government, is an industry carried on by or under the authority of that Government. The expression "carried on by or under the authority of the Central Government", as we understand it, involves a direct nexus with the industry through servants or agents a nexus which cannot co-exist with the concept of a trust which gives the trustee the title to the trust property and which precludes a termination, as in the case of an agency, on the death or at the will of either party.

5. In *Abdul Rehman Abdul Gafur v. Paul (Mrs. E)*¹, the High Court of Bombay had to consider whether Mazgaon Dock Ltd., Bombay, was an industry carried on by or under the authority of the Central Government. The judgment summarized the contention on behalf of the petitioners as follows :

"Mr. Sule for the petitioners contends that because the Union of India and/or the Central Government is the owner of the whole share capital of the company, it is abundantly clear that the company and/or the industry is carried on by or under the authority of the Central Government. He also contends that the provisions in the articles of association of the company make it abundantly clear that the industry is carried on by the Central Government. Even if that is not so, he contends that in any event it is clear that the industry is carried on under the authority of the Central Government"; and said :

"The phrase 'under the authority of the Central Government' contained in Section 2(a)(i) must mean and is intended to apply to industries carried on directly under the authority of the Central Government. Industries which are carried on for their own purposes by incorporated commercial corporations which are governed by their own constitution, as authorised by Indian Companies Act, cannot be described as carried on under the authority of the Central Government. The obvious reason to support the above finding is that these corporations are independent legal entities and run the industries for their own purposes. Even when the Central "Government controls these corporations, their industries are worked under the authority of their own constitutions or charters."

6. Counsel for the appellant submitted that the Bhilai Steel Project is a project of the Hindustan Steel Limited, the shares of which are owned by the Central Government, and that the Supreme Court has held in *Bhilai Steel Project v. Steel Worker's Union, Bhopal*², that the project is an industry carried on by or under the authority of the Central Government. A perusal of the decision, however, shows that the question as to whether the project was an Industry carried on by or under the authority of the Central Government was not allowed to be raised at all and was not considered in that case. The following passage from the judgment makes the position clear :

"It is not open to dispute before us that the Steel industry at Bhilai was an industrial establishment under the control of the Central Government. There was a faint attempt on the part of the learned counsel, who appeared before us

¹1962-2 Lab LJ 693 : AIR 1963 Bom 267

²1964-1 Lab LJ 377 : AIR 1964 SC 1333

on behalf of the respondents, to suggest that the steel industry at Bhilai was not under the control of the Central Government. No such point appears to have been raised either before Sri. Sanyal or the industrial court. So, we did not permit the respondents to raise this point for the first time here. It may also be mentioned in this connection that in the very notification made by the Madhya Pradesh Government on 22 July 1958, that Government made the definite statement that the steel industry at Bhilai was carried on under the authority of the Central "Government. We think it reasonable to presume for the purpose of these appeals that this statement made by the Government of Madhya Pradesh was correct."

7. Counsel for the appellant also drew our attention to *Cantonment Board, Ambala v. State of Punjab*³, a decision of the Punjab High Court, wherein it was held that an industry carried on by a Cantonment Board established under the Cantonment Act, 1924, was an industry carried on by or under the authority of the Central Government. We are not concerned with such a board and we consider it unnecessary to evaluate the correctness or otherwise of that decision. The question as to whether a particular industry is carried on by or under the authority of the Central Government is essentially a question of fact depending on the circumstances of each case.

8. Counsel for the appellant submitted that the question whether the Indian Naval Canteen Service at the Naval Base on Willingdon Island even if it is carried on by or under the authority of the Central Government is an industry or not should be left open by us as has been done in the judgment under appeal. We do so.

9. In the light of what is stated above the appeal fails and is hereby dismissed. The appellant will pay the costs of the 2nd respondent, advocate's fee Rs. 150.

Appeal dismissed.

³(1961-62) 20 FJR 6 : AIR 1961 Pun 416