Harinagar Cane Farm And Others vs State Of Bihar And Others on 21 March, 1963

Equivalent citations: 1964 AIR 903, 1964 SCR (2) 458, AIR 1964 SUPREME COURT 903, 1964 BLJR 333, 1964 9 FACLR 47, 1963 (1) LABLJ 692, 1963-64 24 FJR 485, 1963 2 SCWR 169, 1963 6 FACLR 431, (1964) 2 SCR 458, 1964 2 SCJ 806, ILR 42 PAT 869

Author: P.B. Gajendragadkar

Bench: P.B. Gajendragadkar, K.N. Wanchoo, K.C. Das Gupta

PETITIONER:
HARINAGAR CANE FARM AND OTHERS

Vs.

RESPONDENT:
STATE OF BIHAR AND OTHERS

DATE OF JUDGMENT:
21/03/1963

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1964 AIR 903 1964 SCR (2) 458
CITATOR INFO :
E 1968 SC 554 (15,21)
R 1971 SC2422 (25)
R 1972 SC 763 (12)

ACT:
Industrial Dispute-Agricultural operation, if constitutes "Industry"-Indusrial Disutes Act 1947 (14 of 1947) s. 2(j).

HEADNOTE:
The appellant in appeal C. A. No. 31 of 1961 is a private limited company registered under the Indian Companies Act It mainly produces sugarance. It also produces wheat, paddy etc., for sale in the market. Further it undertakes

contract works for maintaining tram lines, weigh bridge, etc. The appellant in the other appeal has been purchased by Harinagar Sugar Mills Ltd. and since then is functioning as a department of the said Mills.

459

An industrial dispute raised by the workmen of the respective appellants had been referred by respondent No. 1 the State of Bihar to an industrial tribunal for adjudication. The appellants moved the Patna High Court under Art. 226 on the ground that the agricultural operations carried on by the appellantsdid not constitute art industry and therefore respondent No. 1had no jurisdiction to refer the dispute for adjudication. The High Court repelled this contention and rejected the petition. The present appeals have been filed by way of special leave granted by this Court.

It was contented on behalf of the appellant that the legis- lative history for the past 50 year- in this country including Art. 43 of the Constitution and the relevant entries in the constitution show that a sharp distinction is drawn between industry on the one hand and agriculture on the other and that where, the legislature wants to include agriculture within tile scope of industrial legislation it makes a specific and express provisions on that behalf.

The respondents relying on s. 2(g) of the Minimum Wages Act, 1948, contended that this important statutory enactment for the benefit of workers expressly includes within its purview workmen employed in agriculture. It was con. tended on the other side that the word ,industry' in s. 2(j) in its broad connotation would include agriculture and the legislature had intended to exclude agriculture from the scope of s. 2 (j) it would have expressly done so.

Held that in dealing with industrial matters industrial adjudication should referain from enunciating any general principles or adopting any doctrinaire considerations and therefore the large question as to whether all agricultural operations are included within the definition of s. 2 (j) is not decided in this case.

On examination of the facts of these cases before the court it is found that the appellants are limited companies which have been formed, inter alia, for the express purpose of carrying on trade or business, they have invested a large amount of capital for carrying on their agricultural operations in order to make profit and the workmen employed by the appellants contribute to the production of agricultural commodities which bring in profit. In these circumstances even the narrow concept of trade or business is satisfied and the agricultural operations carried on by the appellants fall within the definition of "industry" in s. 2 (j).

460

Case Law reviewed.

D.N. Banerji v. P. R. Mukherjee, [1953] S. C. R. 302. The

State of Bombay v. The Hospital Mazdoor Sabha, [1960] 2 S. C. R. 866, The Ahmedabad Textile Industry Reseach Association v. The State of Bombay, [1961] 2 S. C. R. 480, National Union of Commercial Employees v. M. R. Meher, Industrial Tribunal, Bombay, [1962] Supp. 3 S. C. R. 157, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeals Nos. 349 of 1962 and 31 of 1961.

Appeals by special leave from the judgment and order dated November 18, 1959, of the Patna High Court in Misc. judl. Cases No. 287 and 498 of 1958.

Ganpat Rai and Lalit Kumar, for the appellant (in C. A. No. 349 of 1962).

M.C. Setalvad, and Naunit Lal, for the appellant (in C. A. No. 31 of 1961).

D. Goburdhun, for respondent (in C. A. No. 349 of 62). M. K. Ramamurthi, S. C. Agarwala, D. P. Singh and R.K. Gary, for respondent No. 3 (in C. A. No. 349 of 1962). S.P. Varma, for respondent No. 1 (in C. A. No. 31 of 1961). P. K. Chatterjee, for respondent No. 3 (in C. A. No. 31 of 1961).

1963. March 21. The judgment of the Court was delivered by GAJENDRAGADKAR J.-The short question which arises in these appeals is whether the agricultural operations carried on by the two appellants respectively constitute an industry within the meaning of s. 2 (j) of the Industrial Dispute Act, 1947 (No. 14 of 1947) (hereinafter called 'the Act'). An industrial dispute raised by the workmen of the two respective appellants had been referred for adjudication by respondent No. 1, the State of Bihar, to an Industrial Tribunal under s. 10 (1) of the Act. Both the appellants then moved the Patna High Court for an appropriate writ under Art. 226 of the Constitution on the ground that the agricultural operations carried on by them did not constitute an industry under the Act, and so, respondent No. 1 had no jurisdiction to make the impugned orders of reference under s. 10 of the Act. The High Court has repelled this contention and has held that the agricultural operations carried on by the appellants respectively constitute an industry, and so, the two impugned orders of reference are perfectly valid under s. 10. It is against these orders passed by the Patna High Court in the two petitions filed by the respective appell- nts that they have come to this Court by special leave; and the short question which falls for our decision is in regard to the applicability of s. 2 (j) of the Act to the appellant's operations in question.

M/s. Motipur Zamindari Co. (Pvt.) Ltd., which is the appellant in C. A. No. 31 of 1961 is a private limited company registered under the Indian Companies Act. It mainly produces sugarcane for sale to Motipur Sugar Factory Private Ltd., Motipur, Muffarpur, in pursuance of an agreement under the provisions of the Bihar Sugar Factories Control Act, 1937, and the rules framed thereunder. It also produces wheat, paddy and other articles for sale in the market either to the consumers or to wholesale dealers. Besides, it undertakes contract work of the Motipur Sugar Factory, such as

maintaining tramlines, maintaining weigh bridge at Paharchak, operating lake-pumps, loading and unloading of canes and letting buildings on hire.

M/s. Harinagar Cane Farm which is the appellant in C. A. No. 349 of 1962), had been purchased by the Harinagar Sugar Mills Ltd., in March, 1956, and since then is functioning as a department of the said Mills. It is a subsidiary concern of the Mills and a part of the Organisation of the Mills itself. Thus, the Mills through this section produces sugar for its own purpose, It is in the background of this character of the respective appellants that the question raised by the present appeals has to be determined. Mr. Setalvad for the appellants contends that in determining the question as to whether s. 2 (j) of the Act includes agricultural operations, it would be necessary to bear in mind certain general considerations. He concedes that the words used in s. 2 (j), if they are liberally construed in their fullest amplitude, may perhaps be wide enough to include agriculture and agricultural operations; but he emphasises the fact that the legislative history for more than (50) years in this country shows that a sharp distinction is drawn between industry on the one hand and agriculture on the other. In this connection, lie relies on the provisions of Art. 43 of the Constitution which refers to workers classified as agricultural, industrial, or other- wise when it provides that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all worker a living wage and other amenities specified in the said Article. The argument is, when referring to workers, the Con stitution has recognised a difference between agricultural workers on the one hand and industrial workers on the other. It is also pointed out that the same distinction is made in the relevant entries in the different Lists of the Seventh Schedule. Entries 14 and 18 in the State List, for instance, refer respectively to agriculture, including- agricultural education and research, projection against pests and prevention of plant diseases, and land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization, whereas Entry 24 refers to industries subject to the provisions of entries 7 and 52 of List 1. Reliance is also placed on Entry 22 in the Concurrent List which relates to Trade Unions; industrial and labour disputes. The argument is that agriculture has been left, in the main, to the jurisdiction of the State Legislatures and in doing so, a distinction has been recognised between agriculture on the one hand and industry on the other. It is further suggested that where the legislature wants to include agriculture within the scope of its industrial legislation, it makes a specific and express provision in that behalf; and in support of this argument, reliance is placed on the provisions of s. 3(19) of the Bombay Industrial Relations Act, 1946 (No. XI of 1994). Section 3(19) which defines an industry, provides that 'industry' means, inter alia, agriculture and agricultural operations. Mr. Setalvad, therefore, argues that if this broad distinction between agriculture and industry is borne in mind, it should not be difficult to exclude agricultural operations from t purview of s. 2(j) of the Act. He has also askes us to take into account the fact that if we were to hold that all agriculture and agricultural operations fell within s. 2 (j), it may have an incalculable impact upon the agricultural economy of this country. There is, no doubt, considerable force in this argument. On the other hand, it has been urged by the respondents that it would be erroneous to suggest that the industrial law enacted by the Act intends to exclude from application of its beneficient provisions agriculture and agricultural operations. In support of this argument, reliance is placed on the provisions of the Minimum Wages Act (No. 11 of 1948). Section 2 (g) of this Act defines "scheduled employment"

as meaning an employment specified in the Sehedule, or any process or branch of work forming part of such employment; and when we turn to part 11 of the Schedule, it expressly provides: employment in agriculture, that is to say, inter alia, in any form of farming including the cultivation and tillage of the soil, dairy farming the production, Cultivation, growing and harvesting of any agricultural or hortiCultural commodity. This shows that one of the important statutory enactments Passed for the benefit of workers expressly includes with in its purview workers employed in agriculture as defined in part II of the Schedule.

Similarly, it is urged that where the legislature wants to exclude agriculture from the scope of industrial legislation, it sometimes takes care to make a specific provision in that behalf; and this argument is sought to be supported by reference to s. 4 of the Australian Commonwealth Conciliation and Arbitration Act, 1901, which defines an "'industrial dispute" as meaning a dispute in relation to industrial matters..... extending beyond the limits of any one State including disputes in relation to employment upon State railway or to employment in industries carried on by or under the control of the Commonwealth or a State or any public authority constituted under the Commonwealth or a St ate; but it does not include dispute relating to employment in any agricultural, viticul- tural, horticultural, or dairying persuitt. The argument is that the word 'industry, in its broadest connotation which is intended by s. 2(j) would include agriculture, and if the Legislature had intended that agriculture should be excluded from the scope of the said definition, it would have adopted the precedent of the Australian law while enacting s. 2(i). According to this argument, the provisions of s. 3(19) of the Bombay Act are merely clarificatory and they indicate that the legislature made an express provision for including agriculture in order to avoid any doubt in the matter. The respondents, therefore, contend that there is no reason why the Court should limit or circumscribe the broad and wide meaning of the word 'industry' as defined in s. 2 (j).

The respondents also relied on the provisions contained in cl. (iii) of the explanation to s. 25 A of the Act in support of the argument that agriculture must be deemed to be included within the meaning of s. 2 (j). Section 25A occurs in Chapter V-A which deals with lay-off and retrenchment. It lays down that the provisions contained in ss. 25C to 25E in the said Chapter will not apply to the industrial establishments specified by cls. (a) and (b) of s. 25A (1) and the explanation defines what industrial establishment means in ss. 25A, 25C, 25D and 25E. Clause

(iii) of this explanation shows that the expression "industrial establishment" in the relevant provisions means a plantation as defined in cl. (f) of s. 2 of the Plantations Labour Act, 1951 (69 of 1951). When we turn to the provisions of this section we find that a "plantation' means any plantation to which the said Act applies either wholly or in part, and includes other establishments which it is unnecessary to refer-. Section 1, sub-s. (4) indicates to what plantations the said Act applies. It is thus clear that the plantations to which the Plantations Labour Act, 1951 applies are expressly included

within the expression ",industrial establishments as explained -by the explanation to s. 25A of the Act. The argument is that this explanation indicates that agriculture of which plantations are a part, is not intended to be excluded from the operation of the Act.

In dealing with the present appeals, we do not propose to decide the large question as to whether ;ill agriculture and operations connected with it are included within the definition of s. 2 (j). As we have repeatedly emphasised, in dealing with industrial matters, industrial adjudication should refrain from enunciating any general principles or adopting any doctrinaire considerations. It is desirable that industrial adjudication should deal with problems as and when they arise and confine its decisions to the points which strictly arise on the pleadings between the parties. If in reaching any conclusion while dealing with the narrow aspect raised by the parties before it, industrial adjudication has to evolve some principle, it should and must, no doubt, attempt to do so, but in evolving the principle, care should be taken not to lay down an unduly general or broad proposition which may affect facts and circumstances which arc not before industrial adjudication in the particular case with which it is concerned. Bearing in mind the importance of adopting this approach in dealing with industrial matters, we propose to deal with the narrow question as to whether agricultural operations carried on by the two appellants constitute an industry under s. 2 (j) or not. appellate here is no doubt that for carrying , on the agricultural operations, the appellants have invested a large amount of capital, and it is not disputed that the appellants have invested capital for carrying on their agricultural operations for the purpose of making profits. It is also common ground that the workmen employed by the appellants in their respective operations contribute to the production of agricultural commodities which bring in profit to the appellants. Therefore, even the narrow traditional requirements of the concept of trade or business are, in that sense, satisfied by the agricultural operations of the appellants.

What is more important in the present appeals is that the appellants are limited companies which have been formed, inter alia, for the express purpose of carrying on agricultural trade or business. We have noticed how the agricultural operations carried on by the appellants are within their objects, and so, there is no- difficulty whatever in holding that the said operations are organised by the appellants and carried on by them as a trade or business would be carried on by any trader or businessman. When a company is formed for the purpose of carrying on an agricultural operation, it is carrying on trade or business and a plea raised by it that this organised trade or business does not fall within s. 2 (j) simply and solely for the reason that it is an agricultural operation, cannot be sustained. Incidentally, it may be relevant to refer to the fact that in resisting the argument urged by its workmen against the competence of Mr. Sinha to appear for it, the appellant Motipur Zamindari Co., Ltd., stated before the Tribunal that the Sugar Mills Association of which Mr. Sinha happens to be an office-bearer is connected 'With the industry in which the Zamindari Co., is engaged, and so, Mr. Sinha had a right to represent the management of the appellant in the proceedings before the Tribunal. In other words, it is significant that the appellant expressly admitted that it was a part of the industry, the Association of which had employed Mr. Sinha as its office-bearer. Apart from this aspect, however, we have no hesitation in holding that the High Court was right in coming to the conclusion that the agricultural operations carried on by the two respective appellants are an industry under s. 2 (j).

Before we part with these appeals, we may refer to four decisions of this Court where this question has been considered. In D. N. Baneerji v. P. -B. Mukherjee (1), this Court had occasion to examine the full significance and import of the words "industy'and industrial dispute' as defined by s. 2 (j) and (k) of the Act. It has been urged by the respondents that this decision supports their argument that (1) [1953] S.C.R.302,307.

s.2 (j) includes all agriculture and agricaltural opera- tions, and in support of this proposition, they have invited our attention to the statement in the judgment delivered by Chandrasekhara Aiyar J., where it is observed that the concept of industry in the ordinary nontechnical sense applies even to agriculture, horticulture, pisciculture and so on and so forth. We are not impressed by this argument. The context in which this sentence occurs shows that the Court was there dealing with the ordinary nontechnical sense according to what is understood by the man in the street as the denotation of the word 'industry' or business, and so, the observations made in that connection cannot be taken to amount to the broad and unqualified proposition that agriculture of all kinds is included in S. 2 (j). The decision in that case was that disputes that might arise between municipalities and their employees in branches of work that can be said to be analogous to the carrying on of a trade or business, fall under s. 2(k) of the Act. It is in the light of this decision that the observations on which the respondents rely must be read.

In the State of Bombay v. The Hosptial Mazdoor Sabha (1), this Court has had occasion to examine elaborately the implications of the concept of industry as defined by s. 2

(j). But it may be pointed out that one of the considerations which weighed with this Court in dealing with the dispute raised by the appellant in that case was that in the first Schedule to the Act which enumerates industries which may be declared as public utility service under s. 2

(a) (vi), three entries had been added by Act 36 of 1956. One of these was services in hospitals and dispensaries, and so, it was clear that after the addition of the relevant entry in the First Schedule it would not have been open to anybody to suggest that service in hospitals does not fall under s. 2 (j).

In The Ahmedabad Textile Industry's Research Association v. The State of Bombay (2), this Court (1) [1960] 2 S.C.R. 866, 880.

(2) [1961] 2 S.C.R. 480, held that the activities of the Research Association amounted to an industry, because the manner in which the Association had been organised showed that the undertaking as a whole was in the nature of business and trade organised with the object of discovering ways and means by which member-mills may obtain larger profits in connection with their industries. In other words, though the work was one of research and in that sense, of an intellectual type, it had been so organised as to form part of or a department of the textile industry itself. That is why it was held that the appellant in that case was an employer and his activity was an industrial activity within the meaning of s. 2 (j). On the other hand, the decision in the case of National Union of Commercial Employees v. M. R. Mehar, Industrial Tribunal, Bombay (1), was cited, where this Court was called upon to consider whether the office of a solicitor's firm was an employer and the work carried on in his office an industry under s. 2 (j) : it was held that though the work of Solicitor is, in a loose sense,

business, it could not be treated as an industry under s. 2 (j) because the essential attribute of an industrial dispute was lacking in such case; the essential basis of an industrial dispute, it was observed, is that it is a dispute arising between capital and labour in enterprises where capital and labour combine to produce commodities or to render service, and that could hardly be predicated about a liberal profession like that of a Solicitor. A person following a liberal profession cannot be said to carry on his profession in any rational sense with the active co-operation of his employees, because it is well-known that the main capital which a person following a liberal profession contributes is his special or peculiar intellectual and educational equipment. It is on these grounds that the Act was held to be inapplicable to a solicitor's firm. We have referred to these decisions only to emphasise the point that this (1) [1962] Supp. 3 S.C,R. 157.

Court has consistently refrained from laying down unduly broad or categorical propositions in dealing with the somewhat difficult disputes which the definition contained in s. 2 (j) raises before industrial adjudication. In the present case, the dispute raised lies within a narrow compass and it is on that narrow basis that we have decided it.

In the result, the appeals fail and are dismissed with costs.

Appeals dismissed.