Bharat Bhawan Trust vs Bharat Bhawan Artists Assocation & Anr on 22 August, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3348, 2001 AIR SCW 3194, 2001 LAB. I. C. 2904, (2001) 7 JT 80 (SC), 2001 (5) SCALE 398, 2001 (7) SCC 630, 2001 LAB LR 1058, 2001 (7) JT 80, 2001 (8) SRJ 310, (2001) 3 CURLR 463, 2001 SCC (L&S) 1225, (2001) 91 FACLR 161, (2002) 1 JAB LJ 66, (2001) 2 LABLJ 1064, (2002) 1 LAB LN 54, (2001) 3 SCT 1136, (2001) 3 SCJ 165, (2001) 6 SUPREME 347, (2001) 5 SCALE 398

Bench: S. Rajendra Babu, Shivaraj V. Patil

CASE NO.:
Appeal (civil) 5614 of 2001

PETITIONER:
BHARAT BHAWAN TRUST

Vs.

RESPONDENT:
BHARAT BHAWAN ARTISTS ASSOCATION & ANR.

DATE OF JUDGMENT: 22/08/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil

JUDGMENT:

RAJENDRA BABU, J. :

Leave granted.

Bharat Bhawan Trust, appellant herein, was established under the Bharat Bhawan Nyas Adhiniyam, 1982 [hereinafter referred to as the Act]. The main objects of the said Trust are to preserve and explore, innovate, promote and disseminate arts and to manage and expand Bharat Bhawan as a national centre of excellence in creative arts. Section 2(a) of the Act defines Bharat Bhawan to mean the structure for multi-arts centre built in Bhopal and includes the premises described in the Schedule with all buildings contained therein together with all additions thereof which may be made

after the commencement of the Act. Under the Schedule to the Act, apart from describing the boundaries thereto, it has been described to include

1. Roopankar, the Museum of Fine Art,

2. Madhya Pradesh Rangmandal, the theatre repertory,

3. Vagarth, the Library of Indian Poetry, and

4. Anhad, the Library of Music.

Mr. B.V.Karant was appointed as the Director of the Rang Mandal and thereafter he was succeeded by Mr. Habeeb Tanveer, another eminent theatre personality as the Director. The appellant entered into an agreement with: 1] Gopal Dubey, 2] Anita Dubey, 3] Bhupendra K. Sahu, 4] Anoop K. Joshi, 5] Ravilal Sanghde, 6] Meena Sidhu, 7] Saroj Sharma, 8] Vibha Mishra, 9] Amar Singh Lehre, 10] Umesh K. Tarsakvar, 11] Amod Krishan Bhatt, 12] Sanjay Mehta and 13] Subhashshree, who are creative artists, for the purpose of production of drama and theatre management. They were also entrusted with certain other duties ancillary to production of drama and theatre management. Apprehending that their services were likely to be terminated or not renewed on the expiry of the contract, these artists filed a suit for declaration and injunction for regularisation of their services and against the revamping of Rang Mandal. Temporary injunction was refused. Thereafter, all the 13 artists, who approached the court, entered into fresh agreement, which was to remain in force till 28.2.1997, and the suit was thereafter withdrawn. On 10.1.1997, the said artists raised a dispute which was referred to the Labour Court for adjudication in 33/97.ID and the artists filed their claims before the Labour Court and sought for interim relief. The appellant filed a statement of claim and reply to the claim for interim relief raising preliminary objection that the Trust is not an industry and the artists are not workmen under the Industrial Disputes Act. The Labour Court made an interim award directing maintenance of status quo and restraining the appellant from terminating the services of these artists. The High Court by an order made on 16.10.1997 directed the Labour Court to decide the preliminary objection raised by the appellant on the basis of the documents filed by the parties before the Labour Court. The Labour Court made an order on 17.1.1998 holding on the basis of the documents filed by the parties that the appellant is an industry and the artists are workmen. This order is in challenge in this appeal.

Dr. L.M.Singhvi, learned senior Advocate appearing for the appellant, submitted that the appellant is a unique institute of its kind in the country set up by the Government of Madhya Pradesh where all forms of arts such as performing art, fine art, music, drama, poetry and tribal arts are preserved, promoted and developed. He submitted that although this Court in Bangalore Water Supply & Sewerage Board vs. A. Rajappa & Ors., 1978 (2) SCC 213, has given a very wide meaning to both the expressions of industry and workman, by no stretch of imagination the appellant could be characterised as an industry, which is engaged in an esthetic activity. He also drew our attention to the decisions in 1955 LLJ 448; Miss A.Sundarambal vs. Government of Goa, Daman & Diu & Ors., 1988 (4) SCC 42 [in which teachers were held not to be workmen although the educational institutions where they serve may be industry]; T.P.Srivastava vs. M/s National Tobacco Co. of India

Ltd., 1992 (1) SCC 281, wherein this Court held that a salesman employed for canvassing and promoting sales of companys product in an area involve duties suggesting of ways and means to improve sales, study of type or status of the public to whom the product has to reach, study of market condition and supervising work of other local salesmen cannot be termed to be either manual, skilled, unskilled or clerical in nature but requires an imaginative and creative mind and such a person cannot be termed as workman. He also submitted that the incidental activity entrusted to the respondent artists are all connected with the production of drama and theatre management and, therefore, cannot be taken to be a separate activity to class them as workmen. He submitted that the view taken by the Labour Court needs to be corrected at our hands.

Shri S.K.Gambhir, learned senior Advocate appearing for the respondent artists, submitted that considering the period for which the services of the respondent artists were engaged, the nature of the activities carried on by them, even though to some extent creative is not by itself sufficient to state that they fall outside the scope of the definition of a workman and strongly relied upon the decision of the Bombay High Court in 1959 (1) LLJ 78, wherein a set-up was available to provide instrumental music on occasions like weddings or similar functions and those who were engaged in playing the band or the music were held to be workmen. He, therefore, submitted that the rationale adopted in that case may also be adopted by us. Relying upon the decision in H.R.Adyanthaya & Ors. vs. Sandoz (India) Ltd. & Ors., 1994 (5) SCC 737, he submitted that even though respondent artists may be classed as skilled persons in their respective fields, they were also workmen despite the fact they may not be engaged in manual work. Relying upon the decision in Workmen Employed by Hindustan Lever Ltd. vs. Hindustan Lever Ltd., 1984 (4) SCC 392, he also pointed out that the parties should not be allowed to raise preliminary objection in industrial disputes which may stall the further proceedings and such contention should be dealt with only at the final stage.

On the perspective presented to us in this case, two issues arise for consideration, viz., 1] whether the appellant, which is an institution for the promotion of art and culture, is an industry, and 2] whether the respondents, who are artists, are workmen. We may start our investigation with reference to three tests referred to in BWSSB vs. A.Rajappas case [supra], which are as under:

1. that the institution is engaged in a systematic activity,

2. organised by cooperation between employer and employee

3. for the production of goods and services.

The decision in BWSSB vs. A.Rajappas case [supra] included a wide variety of situations within the ambit of Section 2 (j), including professions, clubs, educational institutions, cooperative societies, research institutions, charitable projects etc. This Court also held that the absence of profit motive or gainful objective is of no consequence and would not leave the entity outside the scope of the definition of industry. There have been innumerable decisions following the said decision, which have taken a broad view of the definition of industry. Following the tests laid down in BWSSB vs. A.Rajappas case [supra], this Court in Suresh Kumar v. Union of India [1989] II LLJ 110, held that an institution of Yoga was an industry. In BWSSB vs. A.Rajappas case [supra], this Court, however,

qualified the dictum by explaining that where a complex of activities some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not workmen, or some departments are not productive of goods and services, and the integrated nature of the departments will be the true test. The whole undertaking will be industry although those who are not workmen by definition may not benefit. It was held that in an educational institution there may be many activities which are separable from the teaching activities.

Thus, to hold that the appellant is an industry, it must satisfy the requirements of the section and the tests laid down in BWSSB vs. A.Rajappas case [supra].

The Bharat Bhawan Trust, as is clear from its objects, to which we have adverted to earlier, is engaged only in the promotion of art and preservation of artistic talent. Such activities are not one of those in which there can be a large scale of production to involve the cooperation of efforts of the employer and the employee nor can it be said that the production of the plays will be a systematic activity to result in some kind of service. Therefore, it is doubtful, in spite of the wide connotation given to industry in BWSSB vs. A.Rajappas case [supra], if the appellant can be classed as an industry under the definition given under Section 2(j) of the ID Act and we need not finally decide this aspect in the present case.

Even assuming that the appellant is an industry the more important question would be to examine whether the artists employed by it are workmen. Under the ID Act, a workman :

> means any person (including an apprentice), employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of of any proceeding under this ac, in relation to an industrial dispute, includes any such person who has been dismissed ,discharged, or retrenched in connection with or in consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute but does not include..
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> An artist engaged in the production of drama or in theatre management or to participate in a play can by no stretch of imagination be termed as workman because they do not indulge in any manual, unskilled or technical, operational or clerical work, though they may be skilled, it is not such a work which can be read ejusdem generis along with other kinds of work mentioned in the definition. A Constitution Bench of this Court in H.R.Adyanthaya vs. Sandoz (India) Ltd.s case [supra], after review of the entire case law, held as follows :
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> . As regards the word skilled, we are of view that the connotation of the said word in the context in which it is used, will not include the work of a sales promotion employee such as the medical representative in the present case. That word has to be construed ejusdem generis and thus construed, would mean skilled work whether manual or non-manual, which is of a genre of the other types of work mentioned in the definition.. [emphasis supplied] [p.755] The work that the respondents perform is

in the nature of a creative art and their work is neither subject to an order required from the Art Director nor from any of the artists. In performing their work, they have to bring to their work, their artistic ability, talent and a sense of perception for the purpose of production of drama involving in the course of such work, the application of the correct technique and the selection of the cast, the play, the manner of presentation, the light and shade effects and so on. In effect, the work they do is creative art which only a person with an artistic talent and requisite technique can manage. To call such a person, a skilled or a manual worker is altogether inappropriate. An artist must be distinguished from a skilled manual worker by the inherent qualities, which are necessary in an artist, allied to training and technique. We derive support for this proposition from T.P.Srivastava vs. M/s National Tobacco Co. of India Ltd.s case [supra] wherein section salesman employed for canvassing and promoting sales of companys products in an area could not be put under the category of workman. There is no question of any work being given to them because the work of an artist is essentially creative, and freedom of expression is an integral part of it. In Hussianbhai v Alath Factory Tezhilali Union, [1978] Lab IC 1264 (SC), this Court held as under:

Where a worker or a group of workers labour to produce goods or services and these goods or services are for the business of another, that other is in fact the employer.

In this case, firstly, no goods and services are being produced, secondly, the acting that is done is not for the business of another. There is a mere expression of creative talent, which is part of freedom of expression.

The other work, apart from acting, that is entrusted to them is only ancillary to the main work and thus the respondents are not workmen. The Labour Court has missed the essence of the matter and has gone on to deal with the aspects not germane to a case of this nature. Even a careful perusal of the documents which may regulate the terms on which they were employed and the emoluments to be payable to them and other kinds of work they have to do such as extension of hospitality by receiving and taking care of other artists are not factors which would weigh against the conclusion reached by us. The Labour Court, on the other hand, has relied on these aspects which are mere details.

Thus we find that the preliminary objection raised by the appellant is valid and ought to have been upheld by the Labour Court. We, therefore, allow this appeal and set aside the order made by the Labour Court. No costs.

...J. [S. RAJENDRA BABU] ...J. [SHIVARAJ V. PATIL] August 22, 2001.