Mgt. Of Som Vihar Apt. Owners Housing ... vs Workmen, Indian Engg. & General Mazdoor on 22 February, 2001

Equivalent citations: (2001)ILLJ1413SC, (2002)9SCC652, AIR 2002 SUPREME COURT 2530, 2002 (9) SCC 652, 2002 AIR SCW 2746, 2002 LAB. I. C. 2468, 2001 LAB LR 599, 2001 (1) JT (SUPP) 67, (2001) 3 LAB LN 815, (2002) 1 SCT 207, 2002 SCC (L&S) 1099, (2001) 1 LABLJ 1413, (2001) 4 SERVLR 649, (2001) 4 SUPREME 559

Bench: S. Rajendra Babu, S.N. Phukan

JUDGMENT

1. An award was made by the Industrial Tribunal, Tis Hazari on a reference made to it on following question :

> "Whether the workmen are entitled to Dearness Allowance, House Rent Allowance, Conveyance Allowance and Uniforms and if so, to what extent and from which date directions are necessary in this respect ?"

2. The appellant raised an objection that the reference is beyond the jurisdiction of the Tribunal inasmuch as the appellant is not an industry and the workmen on whose behalf the respondents are espousing their cause are not workmen under the Industrial Disputes Act and therefore, the reference is bad. Dealing with this aspect of the matter the Tribunal came to the conclusion placing reliance on the decision of this Court in , Bangalore Water Supply & Sewerage Board etc. v. R. Rajappa and Ors. and distinguishing the decision in T.K. Ramesan v. A.O. Thomas, Secretary, Maintenance Committee, 1995 Lab IC 813, held that the housing society in this case is an industry and its employees are workmen under the Industrial Disputes Act and proceeding further the Tribunal rejected the various claims raised on behalf of the respondents except in relation to the one relating to uniform and that relief was granted.

3. The appellant before us reiterated the objections raised before the Tribunal and submitted that the society is only formed to maintain cleanliness in the apartments and to render certain other services personally to the apartment owners themselves and therefore by no stretch of imagination it could be held that they carry on any activity which could be characterised as an industry much less those carrying on the work be termed as workmen.

4. Learned Counsel for the respondents submitted that the appellant is an entity apart from the apartment owners, that they do not take services for themselves; that services are rendered to the apartment owners through the society formed by them; that they receive salary and emoluments from the society; that they work under the control and supervision of the society; and therefore submitted that the society's activities must be characterised as fulfilling the human desire, want and

needs and would constitute certainly an industry as understood by this Court in R. Rajappa's case (supra).

5. The learned Counsel relied upon a decision of this Court in , Karnani Properties Ltd. v. State of West Bengal and Ors. Where a Real Estate Company owning mansions and leasing them out employing workers for their maintenance like sweepers, durwan, plumbers, bill collectors, mistries, liftman etc., this Court held the activity carried on by such company falls within definition of industry and those employees are workmen. That decision is not of any assistance to the respondent for it stands entirely different facts.

6. It is no doubt true that the decision in T.K. Ramesen's case (supra) was rendered by the Kerala High Court in the context of interpretation of the provisions of the Kerala Shops and Commercial Establishments Act. However, the nature of the activities carried on by a group of persons such as owners of flats in a building complex was considered setting out true tests in a case of this nature. We need not examine these facts either.

7. Indeed this Court in Rajappa's case (supra) noticed the distinction between such classes of workmen as domestic servants who render personal service to their masters from those covered by the definition 2(J) of the Industrial Disputes Act. It is made clear if literally interpreted these words are of very wide amplitude and it cannot be suggested that in its sweep it is intended to include service however rendered in whatsoever capacity and for whatsoever reason. In that context it was said that it should not be understood that all services and callings would come within the purview of the definition; service rendered by a domestic servant purely in a personal or domestic matter or even in a casual way would fall outside the definition. That is how this Court dealt with this aspect of the matter. The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and the regulation will not meddle with every little carpenter or a blacksmith, a cobbler or a cycle repairer who come outside the idea of industry and Industrial dispute. This rationale which applies all along the line to small professions like that of domestic servants would apply to those who are engaged by a group of flat owners for rendering personal services even if that group is not amorphous but crystallised into an Association or a society. The decision in Rajappa's case if correctly understood is not an authority for the proposition that domestic servants are also to be treated to be workmen even when they carry on work in respect of one or many masters. It is clear when personal services are rendered to the members of a society and that society is constituted only for the purposes of those members to engage the services of such employees, we do not think its activity should be treated as an industry nor are they workmen. In this view of the matter so far as the appellant is concerned it must be held not to be "industry". Therefore, the award made by the Tribunal cannot be sustained. The same shall stand set aside.

8. However, Mr. Kailash Vasdev, learned Senior Advocate for the appellant submitted that the benefit arising out of the award made by the Tribunal to the extent of providing the uniform to the employees is concerned this Court need not interfere. Except to that extent of granting uniform the award made by the Tribunal is set aside. The appeal is allowed accordingly.