1960

November 17.

THE AHMEDABAD TEXTILE INDUSTRY'S RESEARCH ASSOCIATION

v.

THE STATE OF BOMBAY AND OTHERS

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Research Institute, if an industry—"Industry", Meaning of—Test—Industrial Disputes Act, 1947 (14 of 1947), s. 2(j).

The appellant association was founded in 1947 and the object of the founders was to establish a textile research institute for the purpose of carrying on research and other scientific work in connection with the textile trade or industry and other trade and industry allied therewith or necessary thereto. The cost of maintaining the association was met partly by members and partly by grants from Government and other sources.

The activity of the association was systematically undertaken; its object was to render material services to a part of the community, namely, member-mills, the material services being the discovery of process of manufacture etc., with a view to secure greater efficiency, rationalisation and reduction of costs of the member-mills; it was being carried on with the help of employees some of whom were technical personnel on payment of remuneration, they had no rights in the results of the research carried on by them as employees of the Association which were the property of the Association and it was organised or arranged in the manner in which a trade or business is generally organised.

Disputes arose between the appellant and its workmen which related to wage-scale and dearness allowance and payment of house-rent allowance which was referred for adjudication. The appellant questioned the reference on the ground that the appellant was not an industry and that the Tribunal was wrong in holding that the appellant was included within the definition of the word "Industry" of s. 2(j) of the Industrial Disputes Act, and contended that it was a research centre in the nature of educational activity and therefore had no analogy with activities in the nature of trade or business.

The question therefore was whether appellant was an undertaking within the meaning of s. 2(j) of the Industrial Disputes Act and its activities satisfied the tests laid down in *State of Bombay* v. *Hospital Mazdoor Sabha.*

Held, that the manner in which the activity in question was organised or arranged, the condition of the co-operation between employer and employee necessary for its success and its object to

render material service to the community could be regarded as some of the features which would be distinctive activities to which s. 2 (j) of the Act could be applied.

In the instant case, the manner in which the association was organised clearly shows that the undertaking as a whole was in the nature of business and trade organised with the object of discovery of ways and means by which member-mills may obtain larger profits in connection with their industries. The activity of the association was clearly within the definition of the word "Industry" in s. 2(j) of the Industrial Disputes Act and could not be assimilated to a purely educational institution and satisfies the test laid down in the *State of Bombay* v. *Hospital Mazdoor Sabha*. Thus the Association is an undertaking within the meaning of s. 2(j) of the Act.

When this dispute arose between the Association and its employees it was an industrial dispute and could be properly referred for adjudication under the Act.

The State of Bombay v. *The Hospital Mazdoor Sabha*, [1960] 2 S.C.R. 866 followed. *The Federated States School Teachers' Association* v. *The State of Victoria*, (1929) 41 C.L.R. 569 not applicable.

CIVIL APPELLATE JURISDICTION. Civil Appeal No. 22 of 1959.

Appeal by Special Leave from the Award dated the 31st October, 1957, of the Industrial Tribunal, Bombay in Reference (I. T.) No. 141 of 1957.

M. C. Setalvad, Attorney-General for India, *J. B. Mehta* and *I. N. Shroff* for the Appellant.

Vidya Dhar Mahajan, *K. L. Hathi* and *R. H. Dhebar* for Respondent No. 1.

N. C. Shah, President, Engineering Mazdoor Sabha for Respondent No. 3.

1960. November 17. The Judgment of the Court was delivered by

WANCHOO, J.—This is an appeal by special leave against the award of the Industrial Tribunal, Bombay. There was a dispute between the appellant and its workmen, which was referred by the Government of Bombay for adjudication. It related to the wage-scale and dearness allowance of certain employees of the appellant and also to the payment of house-rent

Wanchoo J.

1960

The Ahmedabad Textile Industry's Research Association v. The State of Bombay & Others

Wanchoo J.

allowance. The main contention of the appellant before the Tribunal was that the reference was not competent under the Industrial Disputes Act, No. XIV of 1947 (hereinafter called the Act), as the appellant was not an industry within the meaning of the Act. The Tribunal rejected this contention and held that the reference was valid. It then went into the merits of the dispute, with which we are however not concerned in the present appeal. The only point urged before us on behalf of the appellant is that the Tribunal was wrong in holding that the appellant was included within the definition of the word "industry" and therefore the reference was competent.

"Industry" is defined in s. 2(j) of the Act as meaning any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The main question canvassed before the Tribunal was whether the appellant was an undertaking within the meaning of s. 2(j). The question as to what is an undertaking for the purpose of s. 2(j) has come up for consideration before this Court in a number of cases, the last of which is *The State of Bombay* v. *The Hospital Mazdoor Sabha*(1), where a question arose whether a hospital run by government was an undertaking within the meaning of s. 2(j). It was pointed out in that case that though s. 2(j) used words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings. If all the words used therein were given their widest meaning, all services and all callings would come within the purview of the definition including those services rendered by a servant purely in a personal or domestic matter and even in a casual way. It had therefore to be considered where the line should be drawn and what limitations should be reasonably implied in interpreting the wide words used in s. 2(j). Further, the contention that the word "undertaking" used in s. 2(j) should be treated as analogous to trade or business and therefore the undertaking in question must involve an economic activity in which capital is invested

(1) [1960] 2 S.C.R. 866.

and which is carried on for profit or for the production or sale of goods by the employment of labour was not accepted in full and it was pointed out that an activity could and must be regarded as an industry even though in its carrying on profit motive might be absent. Further it was held that absence of investment of any capital would not necessarily mean that an undertaking was not included within s. 2(j).

That case then proceeded to consider what kinds of activities could be excluded from the meaning of "undertaking" for purposes of s. 2(j). It was pointed out that activities of government which could be properly described as sovereign activities were outside the scope of s. 2(j), as they were functions which a constitutional government could and must undertake for governance and which no private citizen could undertake. These sovereign activities were defined in the words of Lord Watson as "the primary and inalienable functions of a constitutional government" but would not necessarily include an activity undertaken by government in pursuit of its welfare policies. It was also pointed that though in the absence of profit motive an activity might be regarded as an undertaking, the presence of such motive would be a relevant circumstance in considering whether the undertaking was an industry within the meaning of s. 2(j).

The case then went on to consider the attributes the presence of which would make an activity an undertaking under s. 2(j) on the ground that it was analogous to trade or business. It was pointed out that it was difficult to state these attributes definitely or exhaustively but as a working principle it was said that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees would be an undertaking within the meaning of the Act provided it was carried on in an organised manner like trade or business. Thus the manner in which the activity in question is organised or arranged, the condition of the co-operation between employer and employee necessary for its success

1960

The Ahmedabad Textile Industry's Research Association v. The State of Bombay & Others

Wanchoo J.

and its object to render material service to the community could be regarded as some of the features which would be distinctive of activities to which s. 2(j) applied. We have therefore to see whether the appellant's activity satisfies the tests laid down in this case and if it does, it would be an undertaking within the meaning of s. 2(j).

It will be necessary for this purpose to examine the objects with which the appellant-association was founded and the activities which it is carrying on. The main contention of the learned Attorney-General is that the appellant-association is a research centre and is in the nature of educational activity and therefore has no analogy with an activity in the nature of trade or business. He relies in this connection on a decision of the Australian High Court, *The Federated State School Teachers' Assn.* v. *The State of Victoria* (1), where it was held that educational activities of the State carried on under appropriate statutes and statutory regulations relating to education did not constitute industry within the meaning of s. 4 of the Commonwealth Conciliation and Arbitration Act.

The appellant-association was founded in 1947 and the object of the founders was to establish a textile research institute for the purpose of carrying on research and other scientific work in connection with the textile trade or industry and other trades and industries allied therewith or necessary thereto. The research to be conducted was for the purpose of investigation into manufacture and improvement of materials used in the textile industry, utilisation of the products of the industry, improvement of machinery and appliances used by the industry, improvement of various processes of manufacture with a view to secure greater efficiency, rationalisation and reduction of costs, research into the conditions of work, time and motion studies, fatigue and rest pauses, standardisation of methods of work, conditioning of factories and diseases and accidents arising out of employment in a textile mill. In order to carry out these objects, the appellant-association was to establish, equip and

(1) (1929) 41 C.L.R. 569.

maintain laboratories, work-shops or factories and conduct and carry on experiments; to prepare, edit, print, publish, issue, acquire and circulate books, papers, periodicals etc. and to establish, form and maintain museums, libraries and collections of literature, statistics, scientific data and other information relating to the industry and to disseminate the same by means of reading papers, delivery of lectures, giving of advice and the appointment of advisory officers; to employ or retain skilled, professional or technical advisers or workers in connection with the objects of the association on payment of such fees or remuneration as might be thought expedient; to found, aid or maintain schools or colleges for textile research and endow scholarships and bursaries, to support students engaged in research work; and to encourage the discovery of, and investigate and make known the nature and merits of inventions, improvements, processes, materials and designs which may be capable of being used by members of the association for any of the purposes of the said industry. It will thus be seen that though the object of the association was research, that research was directed with the idea of helping the member mills to improve methods of production in order to secure greater efficiency, rationalisation and reduction of costs. The basis therefore of the research carried on by the appellant was to help the textile industry and particularly the member mills in making larger profits and this was to be done primarily by the employment of technical personnel on payment of remuneration. Reference in this connection may be made to r. 13 of the Rules and Regulations of the appellant-association, which lays down that any member of the association who considers that its interests are prejudicially affected by any research proposed to be undertaken by the association may object to government against the undertaking of the proposed research. Rule 13 read with r. 45 also envisages that if such an objection is taken the proposed research will not be carried on till the objection is decided by the government, though it is provided that the government may direct the research to be carried

1960

The Ahmedabad Textile Industry's Research Association v. The State of Bombay & Others

Wanchoo J.

on during the time the objection is pending consideration of government. The administration of the appellant-association is vested in a council in which the majority consists of the representatives of the textile industry. The research is carried on, as already indicated, under the supervision of a Director of Research, by technical personnel, who are generally paid employees of the appellant-association; but all such technical personnel employed by the association have to give an undertaking to observe strict secrecy in respect of all researches undertaken. They are also to give an undertaking not to use or take advantage in their private capacity of special knowledge so obtained or put into operation any invention or process of which they might have obtained knowledge as aforesaid. It is also provided that any invention or process can be put into operation to the extent to which, and as and when it may be permitted to be so done in common with all members of the association in strict accordance with the Rules and Regulations made by the council. The effect of this provision in r. 42 of the Rules and Regulations is that the result of research is the property not of the person making the research but of the association, to be used by its members in accordance with the Rules and Regulations made by the Council. Then r. 44 provides that every employee of the association engaged on research shall contract in writing that he will in consideration of his employment hold exclusively for the benefit of and assigned to the association at the cost of the association all rights and ownership in any discoveries, inventions, designs or other results arising in the course of such employment upon such research. These provisions make it clear that though the appellant-association has been established for purposes of research, the main object of the research is the benefit of the members of the association. The cost of maintaining the association is met partly by members and partly by grants from government and other sources. It will thus be clear that in effect the association has been established to carry on research with respect to textile industry jointly for the benefit of its members;

but for this, each member-mill might have had to establish its own research department, which would be a part of its activity. Can it be said under these circumstances that this is an undertaking which is purely of educational character and therefore covered by the Australian case mentioned above? We are of opinion, considering the objects and the Rules and Regulations of the appellant-association, that it answers the tests laid down in the *Hospital case* (1) and must be held to be an undertaking within the meaning of s. 2(j). It is an activity systematically undertaken; its object is to render material services to a part of the community (namely, member-mills)—the material services being the discovery of processes of manufacture etc. with a view to secure greater efficiency, rationalisation and reduction of costs of the member-mills; it is being carried on with the help of employees (namely, technical personnel) who have no rights in the results of the research carried on by them as employees of the association; it is organised or arranged in a manner in which a trade or business is generally organised; it postulates co-operation between employers (namely, the association) and the employees (namely, the technical personnel and others) which is necessary for its success, for the employers provide monies for carrying on the activities of the association and its object clearly is to render material service to a part of the community by discovery of processes of manufacture etc. with a view to secure greater efficiency, rationalisation and reduction of costs. The activities of this association therefore have in our opinion little in common with the activities of what may be called a purely educational institution. It is true that the employees who have raised the present industrial dispute do not actually contribute to the research, which is carried on under the appellant-association; but the manner in which the association is organised and the fact that the technical personnel who carry on the research are also employees who have no rights in the results of their research, clearly show that the undertaking as a whole is in the nature of

(1) [1960] 2 S.C.R. 866.

1960

The Ahmedabad Textile Industry's Research Association v. The State of Bombay & Others

Wanchoo J.

business and trade organised with the object of discovering ways and means by which the member-mills may obtain larger profits in connection with their industries. In these circumstances we have no hesitation in coming to the conclusion that the appellant-association is carrying on an activity which clearly comes within the definition of the word "industry" in s. 2(j) and which cannot be assimilated to a purely educational institution. In this view of the matter, when a dispute arose between the appellant and some of its employees, it was an industrial dispute and could be properly referred for adjudication under the Act.

The appeal fails and is hereby dismissed with one set of costs.

Appeal dismissed.

1960

November 17.

SETABGUNJ SUGAR MILLS LTD.

v.

THE COMMISSIONER OF INCOME-TAX, CENTRAL, CALCUTTA.

J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.

Income Tax—Company having several activities—Set-off of loss in one, when can be claimed against profits in another—Whether activities constitute one business or separate businesses—Mixed question of law and fact—Indian Income Tax Act, 1922, (11 of 1922) ss. 24(2), 66(2).

The appellant company which had different ventures claimed to set off against the profits of one venture the losses of its other venture which were brought forward from the back years, contending that the losses were of the same business and s. 24(2) of the Indian Income-tax Act applied. The tribunal rejected the appellants contention and gave reasons why the various activities of the company could not be construed as the same business for the application of s. 24(2).

The company then asked the Tribunal to make a reference to the High Court on questions of law arising out of Tribunal's order. The Tribunal declined to make a reference. The company moved the High Court of Calcutta, under s. 66(2) of