

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2007

CORAM

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA  
AND  
THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

W.A.No.2357 of 2001

A.Kadirvelu ... Appellant/Petitioner

Versus

1.The Presiding Officer,  
I Additional Labour Court,  
Chennai-104.

2.All India Sai Samaj (Regd.,)  
Rep. by its President,  
All India Sai Samaj,  
Mylapore, Chennai-4.

3.All India Sai Samaj (Regd.,)  
Rep. by its Honourary Secretary,  
All India Sai Samaj, Mylapore,  
Chennai-4.

... Respondents

Prayer:- This writ appeal has been preferred against the order dated 28.6.2001 passed by Hon'ble Mr.Justice D.Murugesan in W.P.No.15660 of 1994. सत्यमेव जयते

W.P.No.15660 of 1994:- Presented to this Court under Art 226 of the Constitution of India to issue a writ of certiorari calling for the records of the 1st respondent herein made in the award in I.D.No.739/89 dated 15.10.1993 as published in T.N Government Gazette dated 12.1.1994 in part II Sec 2 at page 81 to 88 and quash the same.

For Appellant : Mr.S.Periyasamy, Advocate

For respondents : No appearance for R2 & R3

## JUDGMENT

A.C.ARUMUGAPERUMAL ADITYAN, J.

This writ appeal has been preferred against the order passed in W.P.No.15660 of 1994 filed under Section 227 of the Constitution of India for the relief of issuance of writ of certiorari directing the respondents to produce the records pertaining to the award in I.D.No.739 of 1989 dated 15.10.1993 as published in Tamil Nadu Government Gazette dated 12.1.1994 in Part II Sec.2 at pages 81 to 88 and to quash the same.

2.1 The appellant is the petitioner in the said writ petition. According to him, he was employed under the 3<sup>rd</sup> respondent viz. All India Sai Samaj (regtd), Mylapore, Chennai-4, as typist-cum-clerk since May 1984 on a consolidated salary of Rs.500/- per month and thereafter the said salary was increased to Rs.700/- per month. Subsequently, the salary was reduced to Rs.500/- per month, which was objected to by the petitioner. The petitioner was terminated on 1.6.1989.

2.2 The petitioner filed an Industrial Dispute case in I.D.No.739 of 1989 on 4.8.1989. The Labour Court, Madras, passed the award on 15.10.1993 holding that the All India Sai Samaj is not an industry and therefore the Industrial Dispute raised by the petitioner is not maintainable and accordingly, dismissed the said case I.D.No.739 of 1989, against which, the above said writ petition was filed before this Court. A learned single Judge of this Court after hearing both sides has dismissed the writ petition on the ground that Samaj is not an industry. Aggrieved by the findings of the learned Single Judge of this Court in the above said writ petition, the present writ appeal has been preferred by the writ petitioner.

3. Now the point for determination in this writ appeal is whether the 3<sup>rd</sup> respondent, the employer of the appellant/petitioner is an Industry to come within the ambit of the provision under the Industrial Dispute Act?

4. Heard the learned counsel for the appellant. There is no representation for the respondents 2 and 3.

5. The learned counsel for the appellant would contend that the respondents 2 & 3 even though religious institutions, are carrying on commercial activities and the appellant was paid wages by his employer 3<sup>rd</sup> respondent and hence, it would come under the purview of the Industrial Act, 1947. According to the learned counsel for the appellant, 3<sup>rd</sup> respondent is engaged in

commercial activities by maintaining Kalyanamandapam and also selling the printing materials and collecting huge revenue and hence, will come under the ambit of Section 2(J) of the Industrial Disputes Act, 1947. The Labour Court relying on the judgment of the Honourable Supreme Court reported in 1978(1) LLJ 349 (Bangalore Water Supply & Sewerage Board, Etc., Etc., Vs. A.Rajappa and other, Etc., Etc.,) has held that Samaj is not an industry. The relevant observation in the above said ratio decidendi of the Honourable Apex Court relevant for the purpose of deciding this writ appeal is as follows:-

"Industry, as defined in Section 2(j) and explained in Banerji's case has a wide import.

I. (a) Where (i) systematic activity; (ii) organised by co-operation between employer and employee (the direct and substantial element is commercial); (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, i.s., making on a large-scale of (prasad or foo) prima facie, there is an industry in that enterprise.

(b) Absence of profit-motive or gainful objective is irrelevant, be the venture in the public, joint or private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undrtaing.

What is an Industry has been defined in Section 2(j) of the Industrial Disputes Act, which reads as follows:-

"industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen"

An industry is a continuity, is an organized activity, is a purposeful pursuit - not any isolated adventure desultory excursion or casual, fleeting engagement motivelessly undertaken.

There is absolutely no evidence on record to show that the Samaj was dominantly involved in business activities.

6.The learned counsel appearing for the appellant relying on 1987 I LLJ 81 (Shri Cutchi Visa Oswal Derawasi Jain Mahajan Vs. B.D.Borue, I.T., Maharashtra, and others), contended that it has been held in the said ratio that religious Trust owning extensive properties and doing service at such properties by engaging large number of persons, will come under the definition of nature. The relevant observation in the above said judgment runs as follows:-

"In case the petitioner Trust chooses to let out the property on a nominal rent, probably because the letting is done to the members of the community, then it is futile to compare letting amount with the donations and contributions to claim that the predominant activity is not commercial. As the petitioners have acquired large number of properties at several places in Bombay and are letting out the same and the workmen are employed to give services at those properties and which are not religious in nature, then it is futile to suggest that the petitioner Trust is not an undertaking which falls under the definition of an industry within the meaning of the Act"

In the above said case it was proved by evidence that the Trust possessed large number of properties in Bombay and had employed about 42 workmen in different sections for carrying out various duties. The workmen employed by the Trust formed a union and submitted the demands in respect of pay scales and other conditions of service. The demands were not accepted and thereupon the Union sought a reference and the Government of Maharashtra in exercise of powers conferred by Clause (d) of Sub-Section 1 of Section 10 of the Industrial Disputes Act made reference to the Industrial Tribunal. Bombay in respect of demands consisting of wages, dearness allowance and festival holidays and only under such circumstances, it was held in the said judgment that the said Trust is to be construed as an industry. The above said facts will not be applicable to the present facts of the case. In the case on hand 3<sup>rd</sup> respondent, All India Sai Samaj, is the one registered under the Societies Registration Act and it is in evidence that the organization has been established to fulfill the good ideals and principles of the Sri Sai and to promote the people and that there is no motive for making any profits or to get goods. As per evidence of M.W.1 on the side of the respondents, in the Samaj prayers are conducted every now and then in prescribed days special prayers/poojas are also conducted. M.W.1 has also deposed to the fact that the Samaj is offering medical aid to the poor and also running school for poor children and that the Samaj was indulging dominantly in religious activities and that there was absolutely no evidence on record to show that Samaj was indulging in commercial activities



to bring home the case within the ambit of Section 2(j) of the Industrial Dispute Act, to declare the Samaj as an industry. The alleged marriage hall was let out for meagre rent of Rs.1,000/- and that for the members of the Samaj marriage hall was let out for Rs.101/- and that collected rent is being used for the maintenance of the marriage hall. Under such circumstances, there is absolutely no evidence on record to show that the Samaj comes under the definition of Section 2(J) of the Industrial Dispute Act to declare the same as an industry. Under such circumstances, the order passed by the learned Single Judge in W.P.No.15660 of 1994 on 28.6.2001 in over considered view does not warrant any interference.

7.In fine, the writ appeal is dismissed confirming the order dated 28.6.2001 passed the learned Single Judge in W.P.No.15660 of 1994. No costs.

ssv

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Presiding Officer,  
I Additional Labour Court,  
Chennai-104.

+ 1 cc to Mr. S. Periyaswami, Advocate SR No. 65622

RA(CO)  
SR/5.11.2007

सत्यमेव जयते

Judgment in  
W.A.No.2357 of 2001

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