

RUTH SOREN
v
MANAGING COMMITTEE, EAST I.S.S.D.A. AND ORS.

NOVEMBER 30, 2000

[S. RAJENDRA BABU AND S.N. VARIAVA, JJ.]

Labour Laws:

Bihar Shops and Establishments Act, 1953:

Section 26(2)—“Establishment”—Educational institution—Applicability of—Held; The word “Establishment is not as wide as “industry” defined under Industrial Disputes Act—Hence, educational institution does not fall with in the scope of “establishment”—Industrial Disputes Act, 1947.

Constitution of India, 1950: Article 19(1)(g).

Education—Imparting of—Held: Though such an activity may be an industry yet it is not a profession, trade or business for the purpose of Art, 19(1)(g).

Words and Phrases:

“Establishment”—Meaning of—In the context of S.26(2) of the Bihar Shops and Establishments Act, 1953.

The appellant filed an application before the Labour Court under Section 26(2) of the Bihar Shops and Establishment Act, 1953 challenging the termination of her service by respondent No. 1 which was an establishment running an educational institution. The Labour Court allowed the application.

Respondent No. 1 filed an appeal before the High Court challenging the aforesaid decision on the ground that respondent No.1 was not an establishment for the purposes of the Act and, therefore, the application filed by the appellant was incompetent. The High Court allowed the appeal. Hence this appeal.

Dismissing the appeal, the Court.

HELD : 1.1. An 'establishment' for the purposes of the Bihar Shops

A and Establishments Act, 1953 means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary thereto. Concept of industry, as defined under the Industrial Disputes Act, 1947 would include any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, industrial occupation or avocation of workmen. There is an organized activity between employers and employees to impart education. Such an activity, though may be industry, will not be a profession, trade or business for the purposes of Article 19(1) (g) of the Constitution and would not be one falling within the scope of 'establishment' under the Act. Therefore, the view taken by the High Court is unexceptionable. [182-D-E]

C *Unnikrishnan JP v. State of Andhra Pradesh*, [1993] 1 SCC 645, relied on.

Corporation of City of Nagpur v. Its Employees, (1960) 1 LLJ 523; *University of Delhi v. Ramnath*, (1963) 2 LLJ 335 and *Federated Municipal & Shire Employees' Union of Australia v. Melbourne Corporation*, 26 CLR 508, referred to.

Bangalore Water Supply & Sewerage Board v. A. Rajappa, [1978] 2 SCC 213, held inapplicable.

E 2. The question for consideration in this case is whether educational institution falls within the definition of 'establishment' carrying on business, trade or profession or incidental activities thereto. 'Establishment', as defined under the Act, is not as wide as 'industry' as defined under the Industrial Disputes Act. [183-A]

F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 513 of 2000.

From the Judgment and Order dated 20.11.98 of the Patna High Court in L.P.A. No. 15 of 1989.

G S.B. Upadhyay, Pawan Upadhyay, Tathagat H. Vardhan, Ms. Shweta Verma and Amar K. Roy for the appellant S.K.Sinha for the Respondents.

The Judgment of the Court was delivered by

H **RAJENDRA BABU, J.** The services of the appellant employed in the establishment of respondent No.1 were terminated on 25.8.1980. She made an application under Section 26(2) of the Bihar Shops & Establishments Act,

1953 [hereinafter referred to as 'the Act'] before the Labour Court, Ranchi A
questioning the correctness of the same. The Labour Court allowed the same
by directing her reinstatement in service with full back wages and continuity
in service. This order made by the Labour Court was called in question in a
writ petition, which on dismissal by a learned Single Judge, was carried in
further appeal to the Division Bench of the High Court. B

Two contentions were put forth before the appellate court, firstly that
respondent No.1 is not an establishment for the purposes of the Act and,
therefore, the application filed by the appellant is incompetent and secondly
that respondent No.1 terminated her services after giving salary for a period C
of three months as provided in the relevant rules and, therefore, was not liable
to be interfered with by the Labour Court even if it were to be held that
respondent No.1 is an establishment. The High Court, after adverting to
several decisions, in particular to *Unni Krishnan, J.P. & Ors. v. State of*
Andhra Pradesh & Ors., [1993] 1 SCC 645, took the view that an establishment
running an educational institution or imparting education and does not carry D
on a business, trade or profession and came to the conclusion that the Labour
Court, therefore, had no jurisdiction to interfere with the order of respondent
No.1 and allowed the appeal on the first contention after noticing that it was
not necessary to deal with the second submission.

For the conclusion the High Court reached, the High Court wholly E
depended on the observations made by this Court in *Unni Krishnan's* case
(supra). In that case, at para 66, Mohan, J., while concurring with the majority
view, started the discussion by stating that in the cases before them, depending
upon the statute, either 'occupation' or 'business' has come to be defined
and it cannot be contended that establishment of an educational institution F
could be 'business'. Nor again, could that be called trade since no trading
activities are carried on. Equally it is not a profession and it is one thing to
say that teaching is a profession but, it is a totally different thing to urge that
establishment of the category of occupation provided no recognition is sought
from the State or affiliation from the University is asked on the basis that it
is a fundamental right. However, while analyzing the decision in *Bangalore* G
Water Supply & Sewerage Board v. A. Rajappa & Ors., [1978] 2 SCC 213, the
learned Judge concluded that while considering as to what would constitute
an industry under the Industrial Disputes Act, the observations made therein
is that an educational institution is an industry and nothing could stand in
the way of that conclusion and certainly that is very different from claiming
a fundamental right under Article 19(1)(g) of the Constitution. To similar effect H

A B.P. Jeevan Reddy, J. also stated that the context in which the observations were made in *Bangalore Water Supply & Sewerage Board v. A. Rajappa* (supra) would have no application in the present case. A Bench of 7-Judge of this Court examined this question and held that we have to look at educational activity from the angle of the Act, and so viewed the ingredients of industry are fulfilled and education is, therefore, an 'industry' and nothing could stand in the way of that conclusion. The basis upon which this conclusion is reached is that an educational institution renders service and, therefore, falls within the concept of industry, as was noticed by Isaacs, J. in an Australian case, *Federated Municipal & Shire Employees' Union of Australia v. Melbourne Corporation*, 26 CLR 508.

C An 'establishment' for the purposes of the Act means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary thereto. Concept of industry, as defined under the Industrial Disputes Act, would include any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen. There is an organised activity between employers and employees to impart education. Such an activity, though may be industry will not be a profession, trade or business for the purposes of Article 19(1)(g) of the Constitution, would not be one falling within the scope of 'establishment' under the Act.

E Therefore, the view taken by the Division Bench of the High Court is unexceptionable. The High Court did appreciate that *Unni Krishnan's* case (supra) itself made a distinction between what was stated in *Bangalore Water Supply & Sewerage Board v. A. Rajappa* (supra).

F In *Corporation of City of Nagpur v. Its Employees*, (1960) 1 LLJ 523 (540), this Court held that Education Department of the Corporation to be an industry. The reason given is that imparting education amounts to service and can be done by a private person also. In *University of Delhi v. Ramnath*, (1963) 2 LLJ 335, this Court held that imparting education is not industry as the work of the University cannot be assimilated to the position of trade, calling, business or service and hence cannot be industry. The majority view in *Bangalore Water Supply & Sewerage Board v. A. Rajappa* (supra) a decision of seven-Judge Bench, is that in the case of an educational institution, the nature of activity is 'exhypothesi' and imparting education being service to community is an industry. Various other activities of the institution such as printing press, transport department, clerical, etc. can be severed from

H teaching activities and these operations either cumulatively or separately form

an industry. Even so, the question for consideration is whether educational institution falls within the definition of 'establishment' carrying business, trade or profession or incidental activities thereto. 'Establishment', as defined under the Act, is not as wide as 'industry' as defined under the Industrial Disputes Act. Hence reliance on *Bangalore Water Supply & Sewerage Board v. A. Rajappa* [supra] for the appellant is not of any help.

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Thus the order made by the High Court is correct and calls for no interference and hence the appeal is dismissed. No costs.

V.S.S.

Appeal dismissed.