CIVIL MISCELLANEOUS

Before D. Falshaw and Gurdev Singh, JJ.

THE CANTONMENT BOARD, AMBALA CANTT.,—
Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 532 of 1959.

Industrial Disputes Act (XIV of 1947)—Section 2—Dispute between a Cantonment Board and its employees—Whether an "industrial dispute"—Administrative staff of the Board—Whether "Workmen"—Appropriate Government to refer disputes between the Cantonment Boards situated in the State of Punjab and their employees—Whether Central Government or the State Government.

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Held, that having regard to the definition found in the Industrial Disputes Act, 1947, the aim or objective that the Legislature had in view, and the nature, variety and range of disputes that occur between employers and employees, the irresistible conclusion is that the definitions in the Act include also disputes that might arise between Local Bodies (Municipalities and Cantonment Boards), and their employees in branches of work that can be said to be analogous to the carrying out of a trade or business. When a dispute arises between Cantonment Board and any of its employees, it becomes necessary to see whether the particular employee or class of employees involved in the dispute are employed in a branch of the Board's activities which is of industrial nature. Purely administrative staff cannot be said to be employed in such a branch or department.

Held, that if Legislature wished to make all employees of Local Bodies and indeed all Government servants, "workmen" for the purposes of the Act it would be a perfectly simple matter to do so by suitably amending the definitions contained in section 2, but, as it is, the definition of an employee in relation to a local body clearly refers only to an industry carried on by or on behalf of that local

body, and for the purposes of deciding whether an industrial dispute exists between any employee of a local body and the body it is necessary to separate the industrial or quasi-industrial activities carried on by the local body from its activities which have no connection with industry even remotely. Pure administrative work falls outside the ambit of industrial activities and hence employees working in the Administrative Department of a Cantonment Board are not "workmen" under the Industrial Distputes Act. The post of a Record-keeper falls outside the industrial activities of a Cantonment Board.

Held, that the appropriate Government competent to refer he disputes between the Cantonment Boards situated in the State of Punjab and their employees is the Central Government and not the Punjab Government.

Carlsbad Mineral Water Manufacturing Company Limited v. *P. K. Sarkar and others* (1), and *Shri Sankara Allon Limited* v. *State of Travancore-Cochin and others* (2), distinguished; *D. N. Banerji* v. *P. R. Mukherjee and others* (3), followed.

Case referred by Hon'ble Mr. Justice K. L. Gosain on 9th March, 1960 to a larger Bench for decision of the important questions of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Falshaw and Hon'ble Mr. Justice Gurdev Singh finally decided the case on 12th September, 1960.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of Certiorari or any other appropriate writ, order or direction be issued quashing the Award of the Tribunal dated 23rd March, 1959, which is published in the Punjab Government Gazette, dated 1st May, 1959.

H. L. SIBAL, ADVOCATE, *for the Petitioner.*

N. N. GOSWAMI, *for Advocate-General and* HARBHAGWAN SINGH AND C. L. LAKHANPPAL, ADVOCATES, *for the Respondents.*

ORDER

FALSHAW, J.—This judgment will deal with two petitions filed under article 226 of the Constitution, Civil Writ No. 532 of 1959 and Civil Writ **Falshaw, J.**

(1) A.I.R. 1952 Cal. 6.
(2) A.I.R. 1953 Travn-Co. 622.
(3) A.I.R. 1953 S.C. 58.

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No. 877 of 1959, the former filed by the Cantonment Board, Ambala Cantonment, and the latter by the Cantonment Board, Kasauli and Subathu Cantonments, and the Cantonment Board, Dagshai.

The facts in the first petition are that by notification dated the 14th of September 1957 an industrial dispute between the workmen and the management of the Cantonment Board, Ambala Cantonment, was referred to the Punjab Industrial Tribunal at Jullundur. The dispute was categorised under ten heads, one of which (No.2) contained ten sub-heads, some of which referred to cases of individuals. At the outset the Cantonment Board raised the objection that the Punjab Government was not the appropriate Government to make the reference. The learned Tribunal overruled this contention by the order dated the 7th of March 1958 and then proceeded to frame issues on the points referred, but after the evidence of the workmen had been led, the Central Government of its own accord appointed a National Industrial Tribunal to which most of the points in dispute were referred. In fact all the points relating to general conditions of service were so referred, and the only points left for adjudication by the Punjab Tribunal related to three individuals, the only one of whom we are now concerned with is Krishan Murti. (Krishan Murti is respondent No.4 in the petition)

Thereafter further objections of the Cantonment Board regarding the jurisdiction of the Tribunal, even in the cases of these three individuals were overruled, and the Tribunal finally proceeded to give its award which went against the Cantonment Board only in the case of Krishan

Murti, whose reversion from the post of Record-Keeper was held to be illegal, it being held that he was entitled to the salary of the Record-keeper from the date of retirement of one Ram Chandra the 30th of September 1953, and that he should be paid the difference between the wages of the Record-keeper and the wages he was actually paid for whatever post he was holding from the date in question.

The other petition was filed by the Cantonment Boards of Kasauli and Subathu and of Dagshai challenging an award made by the same Tribunal, dated the 25th of May 1959, on a reference made by the Punjab Government on the 26th of February 1959 in which the main matter in dispute was whether the workmen of these Boards were entitled to a hill allowance and if so, at what rate and from what date. The other dispute related to the retrenchment of a hospital attendant and a Chowkidar by the Kasauli Cantonment Board. In this case the workmen were represented by the All India Cantonment Board Employees Federation, it being stated that the workmen employed by the Kasauli Cantonment Board numbered about 70 and those of the Dagshai and Subathu about 50 each. The Cantonment Board again raised preliminary objections regarding the jurisdiction of the Tribunal on the grounds that the Punjab Government was not the proper referring authority and that the employees were not workmen within the meaning of the Industrial Disputes Act and also that the matters in dispute were covered by the reference to the National Tribunal, which has been referred to in connection with the other petition. These preliminary objections were overruled and the learned Tribunal proceeded to give an award by

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which 10 per cent of the consolidated wages, i.e. basic wage plus dearness allowance was to be paid to all workmen of the Boards, whether permanent or temporary, as hill compensatory allowance, but the award was not made retrospective and some compensation was ordered to be paid to the two retrenched employees.

The two main points involved in both these petitions are whether the Punjab Government and not the Central Government is the proper referring authority with regard to disputes between the employees and Cantonment Boards, even situated in the State of Punjab, and whether employees of Cantonment Boards, and in particular Krishan Murti, are workmen within the meaning of the Industrial Disputes Act. Under the terms of section 10 of the Industrial Disputes Act disputes are to be referred to Boards, Courts or Tribunals, as the case may be, by the appropriate Government, which is defined as follows in section 2(a):—

"2(a) 'appropriate Government' means:—

(i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a banking or an insurance company, a mine, an oil-field, or a major port, the Central Government, and

(ii) in relation to any other industrial dispute, the State Government."

There is no doubt that Cantonments are created and regulated by the provisions of the Cantonments Act (Central Act 2 of 1942) and their managment is placed in the hands of Cantonment Boards created under the provisions of Chapter III of the Act. Such Boards are ordinarily to consist of the Officer Commanding the station and an equal number of elected members and nominated officials. The provisions of Chapter III as a whole make it quite clear that the working of Cantonment Boards is controlled and supervised by the Officer Commanding-in-Chief of the Command in which the Cantonment is situated and the Central Government in much the same manner as Municipal Bodies created under the Punjab Municipal Act are controlled and supervised by the Deputy Commissioner, the Commissioner and the Punjab Government. The terms of employment of employees of Boards are also governed by the rules drawn up by the Central Government, and it is quite clear from the history of the case of Krishan Murti that service appeals lie to the General Officer Commanding-in-Chief of the Command and from his order to the Central Government.

Thus *Prime facie* it is difficult to see how the Central Government is not the referring authority in the case of a dispute between employees of a Cantonment Board and the Board, if indeed it can be said that the servants of a Cantonment Board are employed in industry, in view of the words in section 2(a) "carried on by or under the authority of the Central Government".

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In deciding the matter against the Cantonment Boards the learned Tribunal relied partly on a letter, dated the 7th of March 1957 issued by the Central Ministry of Defence and partly on the reported cases, *Carlsbad Mineral Water Manufacturing Company Limited* v. *P. K. Sarkar and others* (1) *and Shri Sankara Allom Limited* v. *State of Travancore-Cohin and others* (2).

There is no doubt from the letter referred to above that the Government of India is of the view that the "appropriate Government" is the State Government in whose territory a particular Cantonment Board is situated. The letter contains the following passages:—

> "The Ministry of Law in consultation with the Ministry of Labour have held that State Government is the 'appropriate Government' in respect of Cantonment Boards for the purpose of Industrial Disputes Act, 1947. Consequently Cantonment Boards will be required to apply the Industrial Dispute Act, 1947 read with Industrial Disputes Rules made by the State Government in whose territory the Cantonment Board is situated. The Industrial Disputes Rules (Central) will not apply to the Cantonment Boards."

It remains, however, to be seen whether this view is correct. The question does not appear yet to have been the subject of any reported decision by a High Court.

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(1) A.I.R. 1952 Cal. 6.
(2) A.I.R. 1953 Tra-Co. 622.

In the Calcutta case a dispute had arisen between the Carlsbad Mineral Water Manufacturing Company Limited and its workmen which was referred under the Industrial Disputes Act to a Tribunal by the West Bengal Government. The Company filed a petition in the Calcutta High Court under article 226 of the Constitution opposing the reference on the ground that the Central Government was the appropriate Government. The petition was dismissed by Banerjee J. and the Letters Patent Appeal was decided by Harries C. J. and Das J. The detailed facts which have been given in the judgment are that the Company had entered into an agreement with the Governor-General in Council acting through the Chief Commercial Manager of the East Indian Railway Administration by which they secured the catering rights of providing mineral waters on the East Indian Railway system. By the agreement they acquired a right to sell their mineral waters on the stations of the East Indian Railway and on the trains running on that railway and under the contract the Government had a right to fix maximum prices and to control to some extent the work of the Company. The argument advanced was that they were carrying on an industry by the authority of the Central Government on the ground that they had entered into a contract with the Central Government to provide amenities for railway passengers which the railway would normally be called upon to provide and that to some extent their activities were controlled. Harries C. J. dealt with the matter as follows:—

> "In my view the learned Judge was right in holding that the appellant company was not conducting an industry under

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or by authority of Government. It was conducting its own business of manufacturing and selling soda water and other aerated drinks. For its own benefit it had entered into a contract with Government which gave it the exclusive right of selling these articles on railway stations and trains of the East Indian Railway. It is true that they were doing work which the railway would normally perform, but they were doing it not by the authority of the railway. They were doing it as contractors. The business was not the business of the railway which was being conducted by the appellants as the nominated authority of the railway. The business was the business of the appelants which they were conducting for their own personal profit and benefit. It was in no sense the business of Government and it appears to me that the appellants can in no sense be described as being persons authorised to carry on a Government under a contract and they were carrying on their own business and not that of Government or of the railway."

He later observed:—

"The nature of the contract required considerable control by the Government, but that would not make the business carried on by the appellants as a business of Government carried on by the appellants by authority of Government."

I do not think there is any doubt that this case was clearly distinguishable from the present case, since I can see no analogy whatever between manufacturing and selling mineral waters on a railway system under a contract with Government and administering the affairs of a Cantonment Board under the supervision and control of the Government. A Cantonment Board is in fact directly carrying on the work of Government. In the Travancore-Cochin case the Company owned a salt factory under a licence from the Government for the manufacture, collection and storage of salt as required by the Central Excises and Salt Act and some dispute arose out of a reference to a Tribunal of an industrial dispute between the Company and its workmen by the State Government. The principles laid down in the Calcutta case were followed and it was held that although the Company had obtained a licence from the Government in order to carry on its business this did not make it industry carried on by or under the authority of the Central Government as the Company was working for its own profit. This case again appears to be clearly distinguishable from the present case and thus while I am in respectful agreement with the views expressed in these cases, I still do not think that they help the respondents. I refer again to the Calcutta case and quote a passage from the judgment:—

> "It seems to me that what is referred to in section 2(a) (i) and section 2(g) (i) is any industry owned by Government which is being carried on by Government itself either through a department or by some authority created by Government to carry on that

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industry. An industry carried on by or under the authority of Government is a Government industry which as I have said may be carried on directly by Government or somebody or person nominated by Government for that purpose. No business owned and carried on by a private person or a limited company can be a business carried on by or under the authority of Government."

This seems to me to be the crux of the matter and it strengthens the case of the Cantonment Boards.

The question then arises whether a dispute between a Cantonment Board and its employees is an industrial dispute within the meaning of the Act, with which is linked the question whether the employees of a Cantonment Board are "workmen" within the meaning of the Act and, in particular, whether Krishan Murti, the only workman concerned in the first petition, whose disputed post is that of Record-keeper, is a workman. The relevant definitions are contained in section 2 of the Act. "Employer" is defined as meaning—

(i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the departnment;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.

According to section 2(j) "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. In section 2(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. In section 2(s) "workman" is defined as meaning any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties

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attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

The question whether a dispute between the employees of a Municipal Committee and the Committee was an industrial dispute arose for decision in *D. N. Banerji* v. *P. R. Mukherjee and others* (1), in which a dispute between some employees of the Budge Budge Municipal Committee and the Committee had been referred to an Industrial Tribunal under the Act and its jurisdiction was questioned. The relevant passage in the judgment reads—

"If the public utility service is carried on by a corporation like a Municipality which is the creature of a statute, and which functions under the limitations imposed by the statute, does it cease to be an industry for this reason? The only ground on which one could say that what would amount to the carrying on of an industry if it is done by a private person ceases to be so if the same work is carried on by a local body like a Municipality is that in the latter there is nothing like the investment of any capital or the existence of a profit-earning motive as there generally is in a business. But neither the one nor the other seems a *sine qua non* or necessary element in the modern conception of industry.

"In specifying the purpose to which the municipal fund is applicable, section 108, Bengal Municipal Act (15 of

(1) A.I.R. 1953 S.C. 58.

1932) enumerates under 36 separate heads several things such as the construction and maintenance of streets, lighting, water-supply, conservancy, maintenance of dairy farms and milk depots, the taking of markets on lease, etc. They may be described as the normal functions or ordinary activities of the Municipality. Some of these functions may appertain to and partake of the nature of an industry while others may not. For instance, there is a necessary element of distinction between the supply of power and light to the inhabitants of a Municipality and the running of charitable hospitals and dispensaries for the aid of the poor. In ordinary parlance, the former might be regarded as an industry but not the latter. The very idea underlying the entrustment of such duties or functions to local bodies is not to take them out of the sphere of industry but to secure the substitution of public authorities in the place of private employers and to eliminate the motive of profit-making as far as possible. The levy of taxes for the maintenance of the services of sanitation and conservancy or the supply of light and water is a method adopted and devised to make up for the absence of capital. The undertaking or the service will still remain within the ambit of what we understand by an industry though it is carried on with the aid of taxation, and no immediate material gain by way of profit is envisaged."

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The conclusion was reached in the following passage:—

> "Having regard to the definitions found in our Act, the aim or objective that the Legislature had in view, and the nature, variety and range of disputes that occur between employers and employees, we are forced to the conclusion that the definitions in our Act include also disputes that might arise between municipalities and their employees in branches of work that can be said to be analogous to the carrying out of a trade or business. It is unnecessary to decide whether disputes arising in relation to purely administrative work fall within their ambit."

These remarks will obviously also apply in the case of employees of Cantonment Boards, and it therefore becomes necessary to see, when a dispute arises between a Board and any of its employees, whether the particular employee or class of employees involved in the dispute are employed in a branch of the Board's activities which is of an industrial nature, and I am utterly unable to see how purely administrative staff can be said to be employed in such a branch or department. This matter was left open by the Supreme Court in the case referred to above.

The argument advanced on behalf of the employees in this case really amounted to no more than saying that the employees of a Cantonment or Municipal Board were in no different position from those employed in any industrial undertaking in the ordinary sense of the word, such as a factory manufacturing a particular

class of goods. In that case all the employees would be workmen, whether they were employed in the actual process of manufacture or in the selling and distribution branches, and this would include the clerical staff as well and, in fact, all employees other than those excluded by clauses (iii) and (iv) in the definition of "workman" contained in section 2(s). I find myself, however, unable to accept this argument. In my opinion the employees of a Cantonment or a Municipal Board, in order to be classed as "workmen", must be employed in connection with some part of the activities of the Board which is of an industrial or *quasi* industrial nature, and even if some of the activities of the Board, such as lighting, making and preparing roads, sanitation and conservancy and similar activities, can be classed as industrial or *quasi* industrial, other activities must be held not to be of this nature at all. For instance in the judgment of the Supreme Court the maintenance of dispensaries was mentioned, but others readily suggest themselves, such as the assessing and collecting of taxes, the registering of births and deaths, securing suitable places for the carrying on of any offensive, dangerous or abnoxious trade, calling or occupation, removing undesirable obstructions in public places and establishing and maintaining a system of public vaccination. All these are among the functions of Boards mentioned in the Act, but none of them appears to me to have any connection with the term "industry" even used in its widest sense.

The more recent judgment of the Supreme Court, *The State of Bombay* v. *The Hospital Mazdoor Sabha* (1), was cited, but I do not think

(1) A.I.R. 1960 S.C. 610.

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it helps the argument as it related to a group of large hospitals maintained by the Bombay Government, known as the J.J. group of Hospitals, and the judgment has nothing to say on the question what classes of servants of local bodies are employed in industry. My own view is that if the Legislature wished to make all employees of local bodies, and indeed all Government servants, "workmen" for the purposes of the Act it would be a perfectly simple matter to do so by suitably amending the definitions contained in section 2, but, as it is, the definition of an employee in relation to a local body clearly refers only to an industry carried on by or on behalf of that local body, and for the purposes of deciding whether an industrial dispute exists between any employee of a local body and the body it is necessary to separate the industrial or *quasi* industrial activities carried on by the local body from its activities which have no connection with industry even remotely, and I have no hesitation in holding that the post of a Record-keeper falls outside the industrial activities of a Cantonment Board. In the other case it would seem that the employees of the Cantonment Boards are members of an all embracing Cantonment Board Employees Federation, on behalf of which a general claim for hill allowance had been put forward. In the light of the above discussion it is obvious that some of the employees who belong to the Federation would fall into the category of workmen as defined in the Act, namely, those engaged in such activities of the Board as can be classed as industrial, while others would fall outside this category. Evidently the dispute involving those employees falling outside the category of workmen could not be an industrial dispute and the comprehensive reference would be invalid on

this account. The result is that I would hold that both the awards are bad for want of jurisdiction on the grounds that the referring authority was the Central Government and not the Punjab Government in both cases and that the disputes were not industrial disputes in cases of Krishan Murti and some of the employees of the Cantonment Boards of Kasauli and Subathu and Dagshai. I would accordingly accept the petitions and quash the awards, but leave the parties to bear their own costs.

GURDEV SINGH, J.—I agree. Gurdev Singh, J.

K.S.K.

SUPREME COURT.

Before Sudhanshu Kumar Das, M. Hidayatullah, K. C. Das Gupta, J. C. Shah and Rajagopala Ayyangar, JJ.

THE BULLION AND GRAIN EXCHANGE, LTD., AND OTHERS,—*Appellants.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Civil Appeal No. 123 of 1955.

Punjab Forward Contracts Tax Act (VII of 1951)—Whether valid—S. 2—Forward contracts as defined therein—Whether wagering contracts.

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Held, that the Punjab Forward Contracts Tax Act, 1951, is void and unconstitutional as it is *ultra vires* the powers of the State Legislature and the notification made under the rules promulgated by the Punjab Government under this Act are also void and unconstitutional.

Held, that the words "forward contract" as defined in section 2 of the Act do not set out all the elements which are necessary to render a contract a wagering contract and so the impugned legislation to tax forward contracts as defined does not come within Entry 62 of the State List.

Appeal by Special Leave from the Judgment and Order dated the 12th November, 1951, of the Punjab High Court in Writ Petition No. 116 of 1951.