

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13526 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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SHALIBHADRA ADINATH ENTERPRISE AND SHALIBHADRA APARTMENT
THROUGH MEMBER
Versus
KANAN MARUDAY PADARAM

Appearance:

MR DG SHUKLA(1998) for the Petitioner(s) No. 1

MR HARSHEEL D SHUKLA(6158) for the Petitioner(s) No. 1

SHRIJIT G PILLAI(7937) for the Respondent(s) No. 1

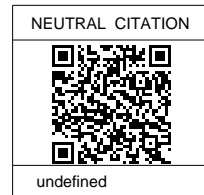
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CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 18/04/2024

ORAL JUDGMENT

1. Rule returnable forthwith. Learned advocate Mr. Shrijit Pillai waives service of notice of rule on behalf of respondent-



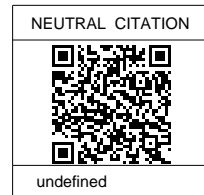
workman.

2. With the consent of the learned advocates for the parties, the matter is taken up for final hearing.

3. The petitioner- a Non-trading Corporation has filed this petition challenging the award of Labour Court, Bhavnagar dated 17.02.2021 in Reference (LCB) No. 37 of 2007, wherein the petitioner has been directed to reinstate the respondent-workman to his original post with continuity and with 10% back wages.

4. The brief facts referred in the petition are as under: -

4.1 Adinath owners Association- a non-trading corporation, registered under the provisions of Bombay Non-trading Corporation Act was constituted for the convenience of its members, who are flat owners of Shalibhadra Apartment. The said non-trading corporation was constituted for providing common amenities like light, water, cleanliness and other maintenance purposes. There are 32 flats owners in Shalibhadra Apartment. The non-trading corporation is not carrying out any activity of trade, business or commerce and the residents of the Apartments are the members of the petitioner. It was case of the petitioner that it is registered under Bombay Non-trading Corporation Act and formed for the maintenance of the Apartment and not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (for short the 'Act').

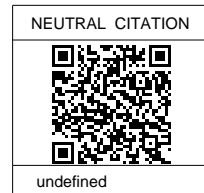


4.2 It was case of the respondent that he was working as Chowkidar (Watchman) with petitioner-non-trading corporation and for his termination on 03.10.2006, he raised dispute before the Assistant Labour Commissioner, Bhavnagar on 06.12.2006. Upon conciliation being failed, the dispute was referred to Labour Court, Bhavnagar and registered as Reference (LCB) No. 37 of 2007. Upon adjudication, Labour Court, Bhavnagar while partly allowing the reference directed the petitioner to reinstate the respondent-workman with continuity and 10% back wages. Being aggrieved by the award dated 17.02.2021, present petition is filed.

5. Heard learned advocate Mr. D.G. Shukla for the petitioner and learned advocate Mr. Shrijit Pillai for the respondent-workman.

6. Learned advocate for the petitioner submitted that the award of Labour Court dated 17.02.2021 is erroneous on following grounds:-

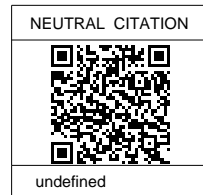
(a) The petitioner herein is a Non-trading Corporation, which entered into a deed of conveyance with the owners of Shalibhadra Apartments, for maintenance and other such amenities. Several covenants of the said deed of conveyance refers to maintenance of apartment by its members by collecting funds. Since the petitioner is a non-trading Corporation, the provisions of Industrial Disputes Act would not be applicable, because the petitioner is not an industry within the meaning of Section 2 (j) of the Act.



(b) In support of above submission, learned advocate Mr. Shukla for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of **Management of Som Vihar Apartment Owners Housing Maintenance society Vs. Workmen C/o Indian Engineering and General Madoor reported in 2002(9) SCC 652** and the decision of Bombay High Court in the case of **Arihant Siddhi Co-operative Housing Society Ltd. Vs. Pushpa Vishnu More, reported in 2018(0) AIJ-MH 181736**. He thus submitted that when no commercial activity is carried out and when the Corporation is formed only for the convenience of the residents of the Apartment, the provisions of I.D. Act would not be applicable.

(c) Referring to the statement of claim at Exh.3, Learned Advocate submitted that in the statement of claim, respondent-workman had accepted that he was working as Chowkidar in the flats. The reference of commercial activity by Non-trading Corporation was not referred and therefore, the finding of Labour Court that petitioner falls within the meaning of industry is erroneous.

(d) The deed of conveyance entered into between the members of the Apartment and the seller, evidently shows that Non-trading Corporation was formed in the year 1989, whereas it was case of respondent-workman that he was appointed in the year 1983 which proves that

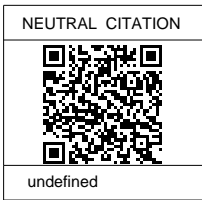


the respondent-workman was not appointed by the present petitioner. The developer, might have appointed the respondent-workman, who was not joined as a party respondent.

(e) Further, there was no evidence to show that the shops and the commercial activity which the Labour Court had referred is forming part of Non-trading Corporation or the appointment of the workman is by shop owners or the members therein. Even if that is so then also it may be by the individual member of the shop owner and not by the members of the Non-trading Corporation. Before the Labour Court also only the members of the Non-trading Corporation have been joined as a party respondent.

(f) The reliance placed by Labour Court on communication dated 18.04.1983, is by Adinath Enterprises, who is the developer and not present petitioner, therefore the award of Labour Court is erroneous. Since, it has ignored to consider that respondent-workman was not appointed by the petitioner as also the petitioner is not falling within the meaning of Section 2(j) of the Act, the order of Labour Court deserves to be quashed and set aside.

7. On the other hand, learned advocate Mr. Shrijit Pillai for the respondent-workman submitted that the award of Labour Court, Bhavnagar dated 17.02.2021 is just and legal on following grounds :-

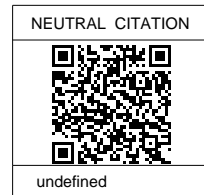


(a) Petitioner herein is a Non-trading Corporation registered under the provisions of Bombay Non-trading Corporation Act, where members are flat owners as well as shop owners. Commercial activities are there in the shops and the hospital is situated there. The deed of conveyance on which reliance has been placed was not forming part of the record of Labour Court and therefore, at this stage, the petitioner cannot rely upon the same.

(b) Relying upon the photograph of Commercial Center, Annexure-R-I (page-69-73) learned advocate submitted that, it is evident that there are commercial activities going on and therefore, it is an industry within the meaning of Section 2(j) of the Act, which has been appropriately considered by Labour Court.

(c) Referring to statement of claim, learned advocate submitted that in the statement of claim, reference was made of both flats and commercial units, therefore reliance placed on only residential units is erroneous. The deed of conveyance on which heavy reliance is placed not of much consequences.

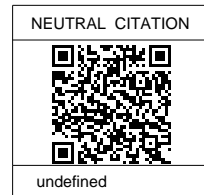
(d) Referring to the cross examination, learned advocate submitted that, witness of the petitioner had admitted that there are shops which are in front of the Apartment. Therefore, since the Non-trading Corporation is forming part of the Apartment as well as the shops, where the commercial activity is going on and since the respondent was working in the premises where



commercial activities are going on, it is an industry within the meaning of Section 2 (j) of the Act.

(e) In support, Learned Advocate relied upon the decision of the Hon'ble Supreme Court in the case of **Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others reported in AIR 1978 SC 548**, to submit that as held by the Hon'ble Supreme Court wider meaning is to be given to industry and therefore, in the present case since Non-trading Corporation covers the shops where the commercial activity is going on, it falls within the meaning of Section 2(j) of the Act. Therefore, the order of Labour Court is appropriate and does not call for any interference.

(f) Moreover, on merits, admittedly, the letter by the developer refers to the appointment of respondent-workman which proves that he was working since 1983 and thereafter he was continued. Since the workman was continued from the year 1983 till his date of termination on 03.10.2006, he was appropriately awarded reinstatement with back-wages. No record is available to justify that there are two Non-trading Corporation and therefore the contention that the Non-trading Corporation was owned only by the members of apartment is beyond facts. Since the workman had continuously worked from the year 1983 till his date of termination and the petitioner being the industry within the meaning of Section 2(j) of the Act, the present petition deserves rejection.



8. Considered the submissions and the decisions relied upon. The members of Shalibhadra Apartment- formed a non-trading corporation and entered into agreement for maintenance and common amenities. In the statement of claim, the respondent- workman had stated that he was employed by Shalibhadra Adinath Enterprises & Shalibhadra Apartment through its President. The year of appointment referred as 1983 and the date of termination was referred as 03.10.2006. The deed of conveyance dated 28.03.1989 entered between Adinath Enterprises and members of the Shalibhadra Apartment, provides that Non-trading Corporation came into existence in the year 1987 and not prior thereto. Even the communication dated 18.04.1983, on which heavy reliance has been placed by Labour Court is by of Adinath Enterprises and not by Shalibhadra Apartment. Clause-4 of deed of conveyance reads as follows:

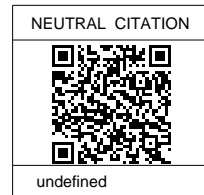
“(1) The purchaser shall be the member of “THE ADINATH OWNERS ASSOCIATION” an organization formed mainly for the purpose of maintenance of “SHALIBHARDA APARTMENTS” and registered under the Bombay Non-trading Corporation Act, 1959 at No. G-1565 dt. 3.7.1987.”

9. Therefore, contention of learned advocate for the petitioner that respondent-workman was not appointed by Non-trading Corporation which came into existence in the year 1987, merit acceptance. Further the Hon’ble Supreme Court in the case of Management of Som Vihar Apartment (supra), has held as under:-



“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.”

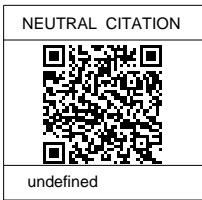
10. Thus, in facts of this case it cannot be denied that the respondent -workman was appointed by the developer namely



Adinath Enterprises for the personal services to the members of the Non-trading Corporation and Non-trading Corporation was constituted for the purpose of those members to engage the services of such employee and therefore, the said activity cannot be treated as an industry within the meaning of Section 2(j) of the Act.

11. Further, the Bombay High Court in the case of Arihant Siddhi Co-operative Housing Society (supra) after taking into consideration the decision of 'Bangalore Water Supply and Sewerage Board', has held as under:-

"5. The Labour Court appears to have been swayed by the fact that a few members of the society were carrying on business such as coaching classes and dispensary and the society was charging advertisement charges for the neon signs put up by the members. The Court was of the view that the society was thereby earning income and, in the premises, could not be termed as a mere housing society. The Court also observed that in the premises the services rendered by Respondent No.1 to the society and its members could not be termed as personal services. The Court observed that the judgment of Som Vihar Apartment Owners's Housing Maintenance Society's case accordingly had no application to the facts of the present case. There is a fundamental fallacy in this reasoning. As held by the Supreme Court in Bangalore Water Supply case when there are multiple activities carried on by an establishment, what is to be considered is the dominant function. In the present case, merely because the society charged some extra charges from a few of its members for display of neon signs, the society cannot be treated as an industry carrying on business of hiring out of neon signs or allowing display of advertisements. In the premises, the impugned award of the Labour Court suffers from a serious error of jurisdiction."



12. Thus, in facts of this case commercial complex being attached to the residential apartment, the personal services availed of respondent-workman would not fall within the meaning of services rendered to an industry. In the opinion of this Court the dominant function of the petitioner- a non-trading corporation cannot be stated to be commercial activities, to fall within the definition of industry within the meaning of Section 2(j) of the Act.

13. Moreover, the decision relied by learned advocate for the respondent in the case of Bangalore Water Supply and Sewerage Board would not be applicable in this case because commercial activity of the petitioner could not be established. Therefore, the award dated passed by Labour Court is erroneous and deserves to be quashed and set aside.

14. In view of above, the following order is passed.

(i) The present petition is allowed.

(ii) The award of Labour Court, Bhavnagar dated 17.02.2021 in Reference (LCB) No. 37 of 2007 is hereby quashed and set aside.

15. Rule is made absolute to the aforesaid extent.

SALIM/

(MAUNA M. BHATT,J)