

The Odisha Gazette

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

No. 411 CUTTACK, WEDNESDAY, MARCH 13, 2013/FALGUNA 22, 1934

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 2nd March 2013

No. 2090—li-1(B)-13/2007-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th December 2012 in Industrial Dispute Case No. 15 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Shree Gopal Krishna Gosala, Nayabazar, Cuttack and their Workmen represented through Cuttack Gosala and Dairy Farm Shramik Sangha, Cuttack was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 15 OF 2008

Dated the 5th December 2012

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch)
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of
M/s Shree Gopal Krishna
Gosala, Nayabazar,
Cuttack. First Party—Management

And

Its Workers
represented through Cuttack
Gosala & Dairy Farm Shramika
Sangha, Nayabazar, Cuttack. Second Party—Workmen

Appearances :

Shri B. C. Jena, Advocate

. . . For the First Party—Management

AWARD

This is a reference of an Industrial Dispute made by the Government of Odisha in the Labour & Employment Department (presently, the Labour & E.S.I. Department) vide their Order No. 3918—li/1(B)-LE., dated the 29th March 2008. The Schedule of reference runs as follows :—

"Whether the demand of Shri Gopal Krishna Gosala and Dairy and Dairy Farm Shramik Sangha for supply of dress, washing soap and cleaning instruments to the workers of Shree Gopal Krishna Gosala, Nayabazar, Cuttack is genuine and/or proper ? If so, what should be the details ?"

2. The second party, a Trade Union formed by the workers employed in the establishment of Shri Gopal Krishna Gosala, Naya Bazar, Cuttack (hereinafter referred to as the Gosala/ Management/First party), in its claim statement has pleaded that more than 100 workers are engaged in the Gosala for taking care of the cows, bulls and calves sheltered in the Gosala. They collect/cut grass/straw and feed the cattle. They also clean the cattle-sheds within the premises of the Gosala. But, they do the work without being supplied with any cleaning instrument. They are also not provided with soap, gloves, dresses which are necessary for their safety and hygiene. Despite of demands made by the Worker's Union the management did not pay any heed. Hence, they raised the dispute.

3. In reply, the management has contended that the Gosala is a Charitable Institution and a Voluntary Organisation rendering service for old and infirm cattle who are sheltered in the Gosala without any profit motive. Its main object is to protect and preserve the old and infirm cattle. It does not get financial aid from either Governmental or non-Governmental Organisations. Milk drawn from the milch cows is not put to any manufacturing process to get any bi-products. Volunteers come forward to render service to the sick and infirm cattle either without any remuneration or for small honorarium. The management engages stray workers on hire for either manual or technical work. Thus, the Gosala is not an 'industry'. That apart, there is no employer-workman relationship between the first party and the workers represented by the second party Union inasmuch as they have been engaged on their own request to render voluntary service to the cattle and are never appointed by the first party to work as its regular employees. For their voluntary work they get small honorarium, besides free accommodation with charge-free electricity and water.

4. Basing on the pleadings of the parties, the following issues have been settled :—

ISSUES

"(i) Whether the first party management is an Industry ?

(ii) Whether the employees represented through the Union are workmen as defined under Section 2(s) of the I. D. Act ?

- (iii) Whether the demand of Shri Gopal Krishna Gosala and Dairy and Dairy Farm Shramik Sangha for supply of dress, washing soap and cleaning instruments to the workers of Shree Gopal Krishana Gosala, Nayabazar, Cuttack is genuine and/or proper ? If so, what should be the details ?"

5. To prove their respective stand, parties have examined witnesses and exhibited documents. W.W. Nos. 1 and 2 are two Members of the Union and they work in the Gosala as Helper and Gowala respectively. M.W. No. 1 is the Manager of the Gosala, whereas M.W. Nos. 2 and 3 are the Accounts Assistant and Treasurer respectively and M.W. Nos. 4 and 5 claim to be workers working in the Gosala but they do not claim to be Members of the Union.

FINDINGS

6. *Issue No. (i)*—It is not in dispute that the Gosala is a Charitable Institution registered under the Societies Registration Act, 1860. It is also not in dispute that it shelters more than 1000 cattle. M.W. No. 2 says that out of the cattle, 152 heads are milch cows and the Gosala draws about 500 Ltrs. of milk a day. On the other hand, W.W. No. 2 has stated that on an average 700 Ltrs. of milk is drawn everyday which is not refuted even by way of any suggestion. According to the second party, more than 100 persons are engaged as workers to take care of the cattle. Evidence of M.W. Nos. 1, 2 and 5 show that around 70 persons are engaged to take care of the cattle. M.W. No. 2 further says that out of the 70 persons, 32 are regular workers, each getting Rs. 3,300 per month in lieu of his work and those who are not regular workers get @ Rs. 110 per day. M.W. No. 1 says that the milk derived from the cattle is sold in the market. He also admits that cow-dung, bio-fertilizer and fruits collected from the trees standing within Gosala compound are also sold to raise fund. Ext. 2 series are sample receipts for sold cow-dung, fire-wood and fruits issued by the Gosala. Similarly, Ext. 3 is a sample coupon issued by the Gosala against which milk is sold to the coupon-holders.

M.W. No. 2 says that there are three Supervisors, one Manager and one Accountant in the Gosala. M.W. No. 1 says that the workers sign the Attendance Register. M.W. Nos. 4 and 5 say that the Cashier keeps account of the work done by the workers and makes payment to them. M.W. No. 4 further says that the time of arrival and departure of the workers is reported to the Manager, whereas according to M.W. No. 4 the Security staff at the main gate of the Gosala keeps a Register to note the time of entry and exit of the workers.

M.W. No. 3 is not at all reliable. His testimony is in material contradiction with that of the other witnesses. The following statements made by him are intended to counter the statements made by M.W. Nos. 1 and 2 which are favourable to the second party. He says that no Attendance Register is maintained that the Gosala has no Supervisor or Manager and that M.W. No. 1 is not the Manager of the Gosala. (But, the management has examined M.W. No. 1 as the Manager of the Gosala). M.W. No. 3 further says that the wages paid to the workers are not fixed. They are paid according to the duration of their work. He also claims that only 30 to 40 workers are working in the Gosala. He has also stated that milk is not sold but it is distributed amongst the donors and workers.

All these statements of M.W. No. 3 are unreliable inasmuch as those are inconsistent with the statements of other witnesses. The fact M.W. No. 3 speaks falsehood is evident from the Gosala's bye-laws, Ext. A. Whereas the witness says that the Gosala has no Manager and that milk drawn daily from the milchy cows is not sold to outsiders but distributed amongst the donors and workers, the bye-laws lay down what are the duties and responsibilities of the Manager including his duty to sell milk, cow-dung, manure etc. at reasonable price. No where there is mention in the bye-laws that the milk shall be distributed amongst donors and workers.

In addition to the aforesaid oral evidence, the bye-laws of the Gosala further reflect that the object of the Gosala is, *inter alia*, to protect the old and infirm cows, bulls, bullocks and calves, keep stud bulls for the purpose of rearing cattle of quality and rear healthy cows, calves and bulls in the Gosala. Basing on these materials a decision has to be arrived at as to whether the Gosala is an 'industry' as defined under the Act.

In *Madras Pinjrapole Vrs. their workmen and another*, reported in 1967 (II) LLJ 399, the Hon'ble Madras High Court have held that Madras Pinjrapole is an 'industry'. Like the Gosala of the case in hand the Madras Pinjrapole is a Charitable Society registered under the Societies Registration Act. It was started with the generous donations given by Philanthropic Members of the public. The object of the Pinjrapole was to provide shelter for the aged, infirm and unserviceable animals. Animals admitted into the Pinjrapole were maintained till they died a natural death. The Pinjrapole was controlled and managed by the Registered Society. Subsequently, the aim and object of the Pinjrapole stood amended and, thereafter, the Committee running the Pinjrapole started a Dairy Scheme and its activities were extended to include the keeping of milch cows and high pedigree stud bull for the purpose of rearing cattle of quality and making the institution self-sufficient.

It was argued on behalf of the Pinjrapole that the main object of the Registered Society being to provide shelter for the old and infirm animals it did not come within the definition of 'industry' under the Act. Considering the nature of the activities of the Pinjrapole his Lordship of the Madras High Court observed as follows :—

" The object of the Madras Pinjrapole after 1937 was to make it a self-supporting unit and for that purpose, it included the dairy farm activity. It cannot be said that the dairy farm was only subordinate in character and that the main activity was that of keeping the decrepit animals. Considering the entire business of the society as a whole it has to be held that at the time when the dispute was referred to the Labour Court the petitioner was an industry."

In *Bombay Pinjrapole, Bhuleswar Vrs. workmen and another*, reported in 1971 (II) LLJ 393, the Hon'ble Supreme Court have observed that the Bombay Pinjrapole which was running something like a Dairy Farm though not in an organised manner was an 'industry'.

Thus, it is found that a Gosala giving shelter to decrepit cattle side by side running something like a Dairy business can be brought within the fold of the definition 'industry' made in the Act. It is true that the parties to the case in hand have not adduced more materials to held this Tribunal to determine the nature of the activities of the Gosala in a fuller manner. For example, in *Bombay Pinjrapole case (supra)* materials were placed showing that the Pinjrapole used to derive income from immovable properties and donations; its income from milk grew steadily and considerably the milk yielded was far in excess of the needs of the inmates of Pinjrapole, the sale proceeds of milk was neither meant for the benefit of donors nor of the trustees, nor the production of milk related to

the needs of the sick cattle. Therefore, their Lordships observed that the central idea of the Institution was to pursue an activity for obtaining a steady income from sale of milk. It was further observed that the Institution deliberately diversified its objects from only tending to the sick and infirm cattle not merely for their sake but for the sake of improving the cattle population committed to its care with an eye to serve human beings by making large quantities of good milk available to them and thereby getting an income which would augment its resources.

In the case in hand there are materials showing that the Gosala besides giving shelter to the old and infirm cattle, keeps milch cows from whom around 500 Ltrs. of milk is produced daily to be sold in the open market. It is not shown that the sale proceeds of the milk is used exclusively for the benefit of the old and infirm cattle or for the benefit of the donors or the employees of the Gosala. There are no materials to ascertain as to what is the income from milk and whether that income has been growing steadily and considerably. But, the fact that 500 Ltrs. of milk is drawn everyday on an average is indicative of the fact that the Gosala by keeping large number of milch cows derives huge income from milk. It is also found that around 70 workers are engaged by the Gosala to take care of the cattle including the milch cows. It is also on record that there is a building inside the Gosala premises which is let out to a Pharmaceutical Firm (Para. 17 of the evidence of M.W. No. 3). It is also on record that the Gosala receives donations from different sources which are accounted for by maintaining registers. Thus, it is found that the Gosala derives income from other sources as well. Being confronted with all such materials, it is difficult to hold that maintaining cows and stud bulls and selling milk are subsidiary in nature to the main activity of the Gosala, namely to provide shelter for the old and infirm cattle. All these activities are done with the help of large number of workers in a systematic manner. Thus, the materials available on record make out a strong *prima facie* case that the Gosala is an 'industry'.

7. *Issue No. (ii)*—It is admitted that around 70 persons are working in the Gosala to take care of the cattle. According to M.W. No. 2, about half of them are regular workers and the rest are engaged on daily wage basis. He has further clarified that the regular workers get wages @ Rs. 3,300 per month, whereas others get daily wages @ Rs. 110. M.W. Nos. 4 and 5 say that each of them get Rs. 110 a day even though according to them there is no fixed working hours for them. The management's stand that the workers are not 'workmen' as defined under the Act stands on the footing that the management has not given them appointment and that they have voluntarily come forward to render service to the old and infirm cattle in lieu of honoraria. Not a single worker has come forward to say that he works for the cattle as a volunteer on receiving honorarium. It is found that workers like W.W. Nos. 1 and 2 have been working in the Gosala since 1992. It is also on record that most of the workers reside in the houses owned by the Gosala within the Gosala premises and they enjoy accommodation including electricity and water free of charges. Thus, there are materials showing that the workers get wages from the Gosala as defined under the Act and they have been employed in the industry to do manual/unskilled work for hire or reward.

Consequently, the issue is answered in favour of the second party.

8. *Issue No. (iii)*—Before entering into discussion on the merit of this issue, it is pertinent to mention that the management has challenged the locus standi of the Union who has raised the demand on behalf of the workers. It is contended that no such Union is in existence. But, this claim is found to be false. Ext. 4 is a Minutes of Discussion, dated the 28th October 2006 which has been signed by the representatives of the management as well as the Union. In Ext. 4 itself there is reference to the very existence of the Union. Similarly, Exts. 5 and 6 are letters of the management

addressed to the General Secretary and President of the Union. These documents came into existence before the present dispute was raised by the Union. These documents prove the existence of the Union. Hence, the contention is without substance.

9. It is submitted on behalf of the second party that each of the workmen should be supplied with dress, washing soap, hand gloves and shoes. The other side submits that the Gosala being not a profit earning organisation has no sufficient funds to meet the demands of the workmen. There is no evidence to show that the Gosala has any other sources of income than donations and sale proceeds from sale of milk, cow-dung, etc. The financial capacity of the Gosala is not fully reflected on record. However, the submission made on behalf of the Gosala must be taken into consideration while determining the propriety of the demand made by the Union.

10. It transpires from the evidence of the witnesses that the workmen engaged in the Gosala perform different work such as cattle-shed cleaning, grass/straw cutting, milking, cattle washing, milk selling, etc. However, it is not clear from the materials on record as to whether different groups of workers have been set apart for different nature of work. It is quite possible that specific work has not been allotted to individual workmen and all of them do the sundry jobs.

In absence of clear and cogent evidence it cannot be presumed that each and every worker working in the Gosala is engaged in the cleaning work on each day. Therefore, it would not be proper to ask the management to supply shoe, apron and washing soap/powder individually.

It is found that about 70 to 100 workers are engaged daily in the Gosala. There would be huge financial burden on the management if it is asked to supply dress, gloves, shoes and soaps to each of the workers. At the same time it is also evident that while doing the sundry jobs in the Gosala campus the workers handle dirty things and their person as well as wearing apparel get soiled. Maintenance of cleanliness amongst the workers working in the Gosala seems to be very much essential not only for the sake of the workers but also for the health of the cattle and the public who purchase the Gosala milk. The management has neither pleaded nor established that the demands made by the workmen are not genuine or proper.

It is rightly worked out that around 2/3rd of the sale proceeds of milk is spent on wages paid to the workers. The second party has not proved as to what is the extent of financial capability of the Gosala to meet their demands. It is admitted that most of the workers get free accommodation with charge free electricity and water. Yet, maintenance of cleanliness of the workers while doing their work in the Gosala being considered essential, it is to be decided as to how the problem can be solved causing minimal financial burden on the management.

Considering the number of cattle sheltered in the Gosala and the nature of work undertaken by the workers, it is considered necessary for the management to make provision for shoes and washing soap/powder at the work place. But, use of gloves while performing the work is not considered to be either convenient or essential. Similarly, instead of supplying dress to each of the workers, it would be better if provision for wearing of apron while doing the cleaning work is ensured. The management should maintain a pool keeping sufficient number of aprons and shoes at the work place for the use of the workers as and when they are engaged in cleaning cattle-shed and washing the cattle. Since the demand for supply of gloves is not considered favourably the management should make provision for soap cakes at the work place to facilitate the workmen to wash their hands.

So far the demand for washing soap is concerned, there is no doubt that even if the workers wear aprons while doing their cleansing work their wearing apparels would get soiled everyday. Therefore, they have to incur extra expenses on purchase of detergent cakes/powder. The demand for supply of washing soap is therefore considered to be genuine and proper. It is considered to be just and appropriate to supply two detergent cakes to each worker for each month to meet his requirement. However, instead of asking the management to provide detergent cakes/powder, it should pay Rs. 30 (Rupees thirty) per month (like monthly washing allowance) to avoid frequent controversy over the quality, size and make of the detergent cake/powder.

11. In the result, the management to maintain a Aprons-*cum*-Shoes Pool at the work place for the use of the workers while doing the cleaning job and to provide soap cakes at the work place to facilitate the workers to wash their hands after completing the cleansing work. Further, in lieu of supply of detergent cake/powder, the management shall pay Rs. 30 per month to each of those workers who work for more than twenty days a month which be made payable along with their wages.

The issue is answered accordingly.

The reference is disposed of with a direction to the management to implement the Award within a period of two months of the date of its publication in the Official Gazette.

Dictated and corrected by me.

RAGHUBIR DASH
5-12-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
5-12-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

J. DALANAYAK

Under-Secretary to Government