

CASE NO.:
Appeal (civil) 37 of 1998

PETITIONER:
The Management of the Tata Iron & Steel Co.Ltd.

RESPONDENT:
Chief Inspecting Officer & Ors.

DATE OF JUDGMENT: 17/12/2004

BENCH:
Ashok Bhan & A.K. Mathur

JUDGMENT:
J U D G M E N T

WITH

Civil Appeal No.2309 of 1999

Tata Iron & Steel Co.Ltd.

Appellant

Versus

Labour Court, Jamshedpur & Anr.

Respondents

A.K. MATHUR, J.

Both these appeals raise common question of law, therefore they are disposed off by this common order.

CIVIL APPEAL NO. 37 OF 1998

This appeal is directed against an order passed by the Division Bench of the Patna High Court dated February 14, 1997 whereby the Division Bench of the High Court held that the Tata Main Hospital at Jamshedpur (hereinafter referred to as the 'Hospital') is an establishment within the meaning of Section 2(6) of the Bihar Shops and Establishments Act, 1953 (hereinafter to be referred to as the "Act") and it is covered by the aforesaid Act. Aggrieved by the aforesaid order this appeal has been filed by the appellant.

Brief facts which are necessary for the disposal of this appeal are that the Hospital was established by the Management of Tata Iron & Steel Company Ltd in the year 1908 for providing medical facilities to the employees as well as their families and dependent of the Company, and its associated companies namely, TELCO, Tata Yodogawa, Tata Robin Fraser and their employees at Jamshedpur. It is also alleged that apart from catering for the employees of the appellant and its associated industries it also caters for the Government employees on payment of charges about Rs.50/- per day and from other private patients at the rate of Rs.120/- per day. It is alleged that 75 % of the patients treated are either employees of the appellant or its associated companies or family members of the employees of the appellant or its associated companies. 15% of the

patients are Government employees and the rest 10% of the patients are outsiders. It is alleged that a letter was sent by the Labour Superintendent, Jamshedpur to the appellant on November 7, 1995 for registration of the Hospital as an establishment under the provisions of the Act. An objection was taken by the appellant to the effect that since it is providing medical service to its employees and its associated industries and it is not involved in the commercial activities, as such it is not an establishment within the meaning of the Act and it cannot be covered by the aforesaid Act. This objection was overruled by the authorities. Hence the present writ petition was filed.

The Division Bench of the Patna High Court after considering necessary provisions of the Act and the Rules framed there under affirmed the order of the authority and held that the establishment is covered by the Act. Hence the present appeal by way of special leave before this Court.

We have heard learned counsel for the parties. Principally two submissions have been made; (i) that the present Hospital does not fall within the definition of 'establishment' as defined in Section 2(6) of the Act and (ii) that under section 4(2) read with Schedule 1 of item No.2 it is a charitable hospital and therefore it is exempted under the aforesaid section.

Before we advert to the facts of the case, we may mention here that a statement of revenue and expenditure of the budget of the Medical Division has been furnished by the appellant and it has been pointed out that there is always deficit in the medical account under the Hospital head. It is also admitted position that the Hospital is one of the Divisions of the appellant. It has also given the details as to the numbers of patients of the appellant and its associated companies are taken care and number of Government servants and private patients are also being treated by the Hospital.

Intervenors have also filed a statement showing what are the charges effective from April 1, 2000 for non-entitled category of patients and it has been pointed out that admission charge of Rs.75/- has been revised to Rs.1000/-, charges in the general ward is Rs.400/- per bed, VIP cabin is charged at Rs.1250/- and ICU cabin charge is Rs.2250/- per day. Likewise, the details for each of the medical speciality charges are being levied varying from Rs.100/- to Rs.1000/-. It is an admitted position that the Hospital is a part of the establishment of the appellant and the Medical is one of its Department.

Section 2(4) defines 'employee' which reads as under:

" (4) "employee" means a person wholly or partially employed for hire, wages including salary, reward, or commission in, and in connection with any establishment and includes 'apprentice' but does not include member of the employer's family. It also includes person employed in a factory who are not workers within the meaning of the Factories Act, 1948(63 of 1948), and for the purpose of proceeding under this Act, include an employee, who has been dismissed, discharged or retrenched for any reason whatsoever;"

Section 2(5) defines 'employer' which reads as under:

" (5) "employer" means a person who owns or exercises ultimate control over the affairs of an establishment and includes a manager, agent or any other person in the immediate charge of the

general management or control of such establishment;"

Section 2(6) defines 'establishment' which reads as under:

" (6) " establishment" means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession and includes-

- (i) administrative or clerical service appertaining to such establishment;
- (ii) a shop, restaurant, residential hotel, eating house, theatre or any place of public amusement or entertainment; and
- (iii) such other establishment as the State Government may, by notification, declare to be an establishment to which the Act applies; but does not include a 'motor transport undertaking' as defined in clause (g) of Section 2 of the Motor Transport Workers Act, 1961 (27 of 1961);"

Section 2(16) defines 'shop' which reads as under :

"(16) "Shop" means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers and includes an office, store-room, godown, warehouse and work place, whether in the same premises or elsewhere, used in connection with such sales or services, but does not include a restaurant, a residential hotel, eating-house, theatre or other place of public amusement or entertainment;"

Section 4 deals with exceptions which reads as under :

" 4.Exceptions-(1) The provisions of this Act shall not apply to any precinct or premises of a mine as defined in clause (f) of Section 2 of the Mines Act, 1952 (XXV of 1952).

(2) Notwithstanding anything contained in this Act, the provisions thereof specified in the third column of the Schedule shall not apply to the establishment, employees and other persons referred to in the corresponding entry in the second column;

Provided that the State Government may, by notification, add to, omit or alter any of the entries in the Schedule in respect of one or more areas of the State and on the publication of such notification, the entries in either column of the Schedule shall be deemed to be amended accordingly."

Item No.2 of Schedule I which is relevant for our purpose reads as under :

" SCHEDULE I

Serial No.	Establishments, employees or other persons	Provisions of the Act
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XX

XX

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2. Establishments for the treatment or the care of the infirm, sick, destitute or the mentally unfit, which are not run for the profits but for charitable, philanthropic, religious or educational object. " All provisions

Section 6 deals with registration and renewal of the establishment. It reads as under :

"6. Registration of establishments and renewal thereof- The State Government may make rules requiring the registration of establishment or any class of establishments or renewal thereof and prescribing manner and the fees payable for such registration or renewal."

Rest of the provisions deal with hours of work, weekly holidays, other service conditions and removal of the employees and with necessary provisions for implementation of the provisions of the Act.

Rules have been framed under this Act in exercise of the powers conferred under Section 40, they are known as the Bihar Shops & Establishment Rules, 1955 (hereinafter to be referred to as the 'Rules'). Rule 3 lays down that within thirty days of coming into force of the aforesaid Rules, an employer shall make application for registration of the establishment. Rule 3-A deals with renewal of certificate of registration. Other provisions with regard to the service conditions have been dealt with under the Rules.

Under the scheme of the Act, when the Hospital did not apply for registration, then a notice was sent to the Hospital for registration. The appellant objected to the registration. The said objections were overruled and the appellant was asked to get the Hospital registered. Against this order, the present writ petition was filed before the High Court. The question is whether the present Hospital is an establishment or not. If it is an establishment, then it is under obligation to apply for registration. It is an admitted position that the Hospital is a part of the appellant management and as is more than evident that it is one of the Divisions of the appellant, as per the budgetary provisions pointed out above. Therefore, there is no two opinion in the matter that the Hospital is a part of the appellant-Management. But the question is whether this Hospital is covered by the definition of the 'establishment' or not. The definition of 'establishment' as reproduced above, clearly shows that any establishment which carries on any business, trade or provisions or any work connected with or incidental or ancillary to, any business, trade or profession and it includes shop, restaurant and other place of amusement and it further says that the State Government by notification may declare such other establishment to be an establishment to which this Act applies. The only exception is the motor transport undertaking as defined in clause (g) of the Motor Transport Workers Act, 1961. The question is whether this Hospital is engaged in business or not. In this connection, Mr. T. R. Andhyarujina, learned senior counsel for the appellant has submitted that the definition of 'business' is too wide and normally business or trade is for some profit or gain. But this Hospital is not working for any profit or gain and he emphasized with reference to the particulars given by him, that the Hospital is running in loss. Therefore, the question is what are the attributes of the business. In this connection, learned counsel has invited our attention to the dictionary meaning of the word, 'business' as given in Black's Law Dictionary, which reads

as under:

" "business". A commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain."

So far as the definition of 'business' is concerned, it is clear from the facts that right from the beginning when the Hospital was established, it was catering to the needs of the employees and their families at TISCO and its associated companies but at the same time it was open for the Government servants and private patients also. The Government servants and private patients were charged for their treatment in the Hospital. It is not primarily meant to cater to the employees of the appellant or their associated companies but also for the private individuals also. Therefore, it cannot be said that the Hospital was only meant to cater the need of the employees of the appellant. It had the business activities by charging fees from the Government servants as well as private patients for their treatment in the Hospital. It may also be relevant to mention here that the establishment of the present Hospital is an obligation on the part of the appellant management because otherwise they had to contribute under the Employees State Insurance Act, 1948. Under the said Act the employees as well as the employer, both have an obligation to make contribution for the medical facilities provided by the E.S.I. Hospitals. All the establishments have to get themselves registered under section 2 A of the E.S.I. Act. They have also to make necessary contribution as per the provisions of the Act. At the same time, under section 87 of the Act, exemption can also be granted by the Government by issuing notification exempting any factory or establishment or class of establishments in any specified area from operation of this Act for a period of one year and may from time to time by like notification renew any such exemption for periods not exceeding one year at a time. It is admitted by learned counsel for the appellant that the present establishment had obtained exemption up to the year 1996 but after that exemption was not granted and a petition was filed in the Court and stay order has been granted. Therefore, even if the establishment of the Hospital may be for the purpose of taking care of their employees, it is under statutory obligation of the appellant management otherwise they would have to make registration under Section 2A of the E.S.I. Act, 1948. It is admitted that the appellant sought exemption from operation of the Act which was granted up to the year 1996. Be that as it may, the fact remains that from the materials available on record it is apparent that the Hospital is not only catering for the employees but it caters to the Government and private patients as well for which it is charging fee for the services rendered, it is irrelevant whether it is running for profit or loss. Profit or loss is part of the business and it is incidental to every business. Therefore, it is not decisive of the matter whether the establishment is running for profit or gain. Our attention was drawn to a decision of this Court in the case of *Ruth Soren vs. Managing Committee, EAST I.S.S.D.A. & Ors.* reported in (2001) 2 SCC 115. There also, Their Lordships have observed that an establishment for the purpose of this Act i.e. Bihar Shops 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. In the context of educational institution after referring to the case of *Bangalore Water Supply & Sewerage Board's case*, Their Lordships observed that in the case of an educational institution, it may be industry but not Establishment under the Act of 1953, it was observed as under:

" 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 for the appellant is not of any help"

Therefore, this case does not provide any assistance with regard to the present case at hand. In the said case also it was held that the respondent which was running an educational institution in which the appellant was employed, being not an establishment, the application under section 26(2), before the Labour Court against the appellant made by the respondent was incompetent and it was observed that running of the educational institution will not be covered by the establishment. But in the present case. from the facts as mentioned above, it is more than evident that the Hospital is not being run for the employees of the appellant management or their associated industries only but it caters to the need of the Government servants as well as private patients and fee is charged from them. Therefore, the Hospital is doing business and it is not doing charity.

Similarly, in the case of B.R.Enterprises etc. etc. vs. State of U.P. & Ors. etc.etc. reported in (1999) 9 SCC 700, it was observed as follows:

" Article 301 is confined to trade and commerce while Article 298 refers to trade and business and to the making of contracts for any purpose. The use of the words "business " and "contracts for any purpose" and its title "\005 trade, etc." makes the field of Article 298 wider than Article 301. Significantly, the different use of words in the two articles is for a purpose; if the field of the two articles are to be the same, the same words would have been used. It is true, that since "trade" is used both in Articles 298 and 301, the same meaning should be given. But when the two articles use different words, in a different set of words conversely, the different words used could only be to convey different meanings. If different meaning is given then the field of the two articles would be different. So, when instead of the words "trade and commerce" in Article 301, the words " trade or business" are used it necessarily has a different and wider connotation than merely "trade and commerce". " Business" may be of varying activities, may or may not be for profit, but it necessarily includes within its ambit "trade and commerce"; so sometimes it may be synonymous but its field stretches beyond "trade and commerce"

Another aspect that was emphasized was that since it is running in loss and it is not making any profit, therefore it is not covered by the definition of establishment. It may be relevant to mention that the profit or loss is not decisive of the matter with regard to the business. In this connection, reference may be made to the decision of this Court in the case of Board of Revenue & Ors. v. A. M. Ansari & Ors. reported in (1976) 3 SCC 512 wherein Their Lordships while interpreting the definition of business with reference to A.P.General Sales Tax Act, 1957 have held as follows:

" \005 profit motive is not an essential constituent in view of the amendment introduced in the

definition of the term 'dealer' in 1966. As regards the other ingredients the auctions of the forest produce by the Government of Andhra Pradesh are admittedly carried on only annually and not at frequent intervals. Thus the important element of frequency being lacking in the instant cases, it cannot be held that the said Government was carrying on the business of sale of forest produce."

Therefore, to say that the Hospital is not making any profit that is not the touchstone whereby we can judge whether they are doing the business or not. If the activity is frequent, continuous and relating to business, whether they earn profit or not that is not the crux of the matter. Profit or loss is incidental to the business. What is essential is the frequency, continuity and relating to transactions. These ingredients are present in the present activities of the Hospital that it is continuing and regularly taking care of the patients be it private patients or patients belonging to the appellant management or their associated industries. Therefore, the emphasis of the learned counsel that it is not making profit is not relevant for the present case. Our attention was also invited to various other definitions with regard to the business in the context of relevant enactment. It is not necessary to refer to those definitions. Suffice it to say that the profit and loss is not an essential ingredient of business, what is important is frequency, relating to business and continuity. Therefore, from the materials placed by the parties, it is more than apparent that the present Hospital is a part of the establishment of the appellant management and it caters not only for the employees of the appellant management & its associated companies but for Government servants and private patients as well from whom fee is charged. Therefore, they are doing business and they fall within the definition of establishment as defined in Section 2 (6) of the Act.

The next question which has been argued by learned senior counsel for the appellant was that it was doing charity, therefore, it is entitled to exemption under section 4(2) read with Item No.2 of Schedule I. We fail to understand how this activity of the present Hospital can be treated to be a charity. As pointed out above, it is under the obligation of the appellant Management to subscribe for the employees under the Employees State Insurance Act, 1948 by making contribution. Since they were not subscribing contribution because they obtained exemption under section 87 of the E.S.I. Act, 1948 as they run the hospital for the benefit of the employees, the exemption was granted to them till 1996 but subsequently that exemption was refused. Therefore, it cannot be said that what they are doing is charity. Apart from that they are charging fee from the Government Servants and the private patients for the services rendered by them. It is not their case that they are treating all and sundry without any charges. In this connection, learned counsel for the appellant invited our attention to a decision of this Court in the case of Additional Commissioner of Income Tax, Gujarat, Ahmedabad v. Surat Art Silk Cloth Manufacturers' Association, Surat reported in (1980) 2 SCC 31. This was a case under the Income-Tax Act, 1961 and in that connection Their Lordships reviewed all the case law in paragraph 6 of the judgment and observed that law is well settled that if there are several objects of a trust or the institution, some of which are charitable and some non-charitable and the trustees or the managers in their discretion are to apply the income or property to any of those objects, the trust or institution would not be

liable to be regarded as charitable and no part of its income would be exempt from tax. In other words, where the main or primary objects are distributive, each and every one of the objects must be charitable in order that the trust or institution might be upheld as a valid charity. Their Lordships have applied the principle of dominant purpose. The question is whether it is satisfied in the present case or not. In the present case, the dominant purpose is to cater for the needs of the employees of the appellant Management and its associated Industries. In fact, it was established for that particular purpose only. But the services were also extended to Government servants and to the private patients not free of cost. Therefore, the dominant purpose for establishing the hospital is not charitable which is exempted under the Act and the law which has been laid down by this Court in the aforesaid case is that the principle of dominant purpose should be found out from the activities or the business. If the dominant purpose is appearing as charity then it will be admissible to the benefit of a charity and if it is incidental purpose then it will not be entitled to the benefit. In the present case, neither of the situation arises. It is established that this hospital caters as a social measure for the employees of the appellant Management and its associated industries and for the benefit of the Government servants as well as private patients, on payment of fee. Therefore, it does not qualify for any cause as charitable institution so as to be exempted under section 4(2) of the Act read with Item No.2 of Schedule I. In this connection, our attention was also invited to a decision in the case of *Le Cras. V. Perpetual Trustee Co.Ltd. & Ors.* reported in (1967) 3 All E.R. 915. In this case, a testator bequeathed by his will two-thirds of the income of his residuary estate to the Sisters of Charity for the general purposes of St.Vincent's Private Hospital for a period of two hundred years or for so long as they should conduct the Hospital. The private hospital was having 82 beds and close to a public hospital which had 500 beds. This was also conducted by the Sisters of Charity who were a voluntary association of women devoting themselves without reward. The reason for establishing the private hospital was to relieve the pressing demand of the public for admission to the general hospital. Charges were made at the private hospital for beds; it provided accommodation and medical treatment in greater privacy than would be possible in a general hospital. There were surpluses of income over expenditure but the private hospital was not conducted for profit. The surpluses had been used to contribute to the maintenance of the general hospital and for the general purposes of the Sisters of Charity. In that context their Lordships held that the gift of income to the Sisters of Charity for the general purposes of the private hospital was a valid charitable gift. Therefore, what prevailed in the mind of Their Lordships is the dominant purpose for which the hospital was being run. That is not the case here.

Similarly in the case of *Trustees of Tribune Press, Lahore v Commissioner of Income-tax, Punjab* reported in AIR 1939 PC 208, similar question arose under the Income Tax Act, 1922. In the said case while dealing with the Income Tax Act, 1922 held as follows :

" Though the personal or private opinion of the Judge is immaterial, nevertheless for a charitable gift to be valid it must be shown (1) that the gift will or may be operative for the public benefit, and (2) that the trust is one the administration of which the Court itself could, if necessary, undertake and control. There is nothing in the Income-tax Act to discharge the Court of its responsibility in coming to a finding as to the character of the object of a trust- a matter which bears directly upon its validity." Here also the question was what is the dominant purpose for which the trust is created. If the trust is dominantly for the purpose of charity

then of course it will qualify for the exemption. This is not the case here. Our attention was also invited to a decision of this Court in the case of Joseph Rowntree Memorial Trust Housing Association Ltd. & Ors. v. Attorney General reported in [1983] 2 W.L.R. 214. Similarly, in this case also, the question came up for determination was whether the scheme was charitable in law or not. Their Lordships held as follows:

" That the words describing the beneficiaries of the first set of charitable purposes in the preamble to the Statute of Elizabeth had to be read disjunctively so that beneficiaries could be either aged, impotent or poor but that in order to be considered charitable the gift to such people had to have as its purpose the "relief" of a need attributable to the condition of the beneficiaries; that, since the provision of special accommodation relieved a particular need of the elderly, whether poor or not, attributable to their aged condition, the schemes were within the scope of the charitable purpose of providing relief to the aged."

Therefore, the ratio is the dominant purpose in each case. If it is meant essentially for charitable purpose and not open for any other purpose, then of course such institution will qualify for exemption as charitable institution.

Similarly, in the case of P.C.Raja Ratnam Institution V. M.C.D.& Ors. reported in 1990 (Supp.) SCC 97, the question arose whether under Delhi Municipal Corporation Act, 1957, the school run by the society is covered under charitable purpose or not. Their Lordships held as follows:

" The test of 'charitable purpose' is satisfied by the proof of any of the three conditions, namely, relief of the poor, education, or medical relief. The fact that some fee is charged from the students is also not decisive inasmuch as the proviso indicates that the expenditure incurred in running the society may be supported either wholly or in part by voluntary contributions. Besides, the explanation is, in terms inclusive and not exhaustive."

However, in this case, Their Lordships remitted the case for fresh decision as the High Court had not adverted to the aforesaid cause. But in the present case, the facts are well known and it is more than clear that the establishment of the Hospital was not for charitable purpose, it was meant as social measure for the benefit of the employees of the appellant Management and its associated industries as a statutory obligation & for the other patients charges were levied. Therefore, by no stretch of imagination it can be said that Hospital is being run for a charitable purpose.

In the result, in view of our discussions made above, we find that the view taken by the High Court is correct and there is no ground to interfere with the same. The appeal is accordingly dismissed. No costs.

Civil Appeal No.2309 of 1999:

In view of the order passed in Civil Appeal No.37 of 1998, this appeal also fails and is accordingly dismissed. No costs.