

(2010) 10 RAJ CK 0079

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 942 of 2002

Central Council for Research in Ayurveda and Siddha

APPELLANT

Vs

Central Government Industrial Tribunal and Another

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2011) 129 FLR 126 : (2011) 3 LLJ 141 : (2011) LLR 469 : (2011) 2 RLW 1655

Hon'ble Judges : Jagdish Bhalla, C.J;M.N. Bhandari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.N. Bhandari, J.—This appeal is arising out of the judgment passed by the learned Single Judge upholding the award passed by the Labour Court. The appeal was earlier dismissed by this Court, however, in appeal before the Hon"ble Apex Court, the matter has been remitted back to this Court to decide the issue as to whether Appellant is an industry. The matter was accordingly heard on the aforesaid issue.

Learned Counsel for Appellant submits that the Appellant does not fall within the definition of "industry" as provided u/s 2(g) of the Industrial Disputes Act, 1947 (for short the Act of 1947"). Learned Single Judge so as the Labour Court failed to decide the aforesaid issue after taking into consideration the activities of the Appellant-Council. This is more so when the Appellant is fully funded by the Government of India with non-profit making objects, thus its activities cannot be considered to be commercial in nature. The Appellant Council is rather doing sovereign functions, hence, for that reason also, it does not fall within the meaning of "industry" as provided under the Act of 1947. To support the contentions, reference of the judgment of the Hon"ble Apex Court in the case of Physical Research Laboratory v. K.C. Sharma 1997 (76) FLR 212 (SC), has been made to show that therein Physical Research Laboratory was not held to be an

industry in absence of commercial industrial activities. Therein, Physical Research Laboratory, being an institution under the Government of India's Department of Space found to be engaged in research of space science and Knowledge acquired therein was to be used by the Government of India alone. The research work carried out by the said organization was not connected with production, supply and distribution of the materials, goods or services. The research work was not for the benefit or use of others.

2. According to learned Counsel for Appellant, nature of work carried out by the Appellant is similar, thus this case is covered by the judgment aforesaid. Reference of another judgment in the case of Chief Conservator of Forests v. J.M. Kondhare 1996 (72) FLR 840 (SC), has been given. Therein, the work undertaken by the department was not held to sovereign functions. Aforesaid judgment does not render assistance to the Appellant rather it goes against them. Third judgment cited by learned Counsel for Appellant is in the case of Sub-Divisional Inspector of Post, Vaikam and Ors. v. Theyyam Joseph 1996 (72) FLR 690 (SC). Therein Postal and Telecommunication Department was not held to be an industry. With the support of judgments referred to above, prayer of the Appellant is to set aside the award so as the judgment of the learned Single Judge holding that Appellant does not fall within the definition of "industry".

3. Learned Counsel for Respondent No. 2, on the other hand, submits that while the written statement was filed before the Labour Court, Appellant did not raise issue as has been argued herein. In absence of any contention, no evidence was led to substantiate that Appellant does not fall within the definition of "industry". This is for the first time that such an argument has been raised though now it has to be decided by this Court in the light of the order passed by the Hon'ble Apex Court in appeal so preferred by the Appellant whereby the matter has been remitted back to this Court. The fact, however, remains that in absence of any evidence before the Labour Court, can the issue be decided on the contention now made before this Court? Without prejudice to the above objection, learned Counsel for Respondent No. 2 submits that the issue as to whether Research Institution falls within the definition of "industry" or not was authoritatively decided in the Full Bench judgment of the Hon'ble Apex Court in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, Therein earlier judgment of the Hon'ble Apex Court in The Ahmedabad Textile Industry's Research Association Vs. The State of Bombay and Others, was approved reversing the conflicting judgment in the case of Safdarjung Hospital v. Kuldip Singh Sethi. The present matter is squarely covered by aforesaid judgment.

4. The Appellant while submitting its brief synopsis made a reference of definition of "industry", which has not seen the light of the day as after bringing the amendment in the definition of "industry", notification has yet to be issued for making it effective. Thus, brief synopsis submitted by the Appellant contains definition of "industry", which has not been made effective. The manner case has been conducted by the Appellant shows that they are unaware of the legal

position in that regard. This is apart from the fact that even if, the objects of the Appellant society is looked into as narrated in the appeal and synopsis, it can easily be said that it falls within the definition of "industry" based on the ratio in the case of Bangalore Water Supply and Sewerage Board (supra). The prayer is accordingly to dismiss the appeal.

5. We have considered rival submissions of the parties and perused the record of the case carefully.

6. It is a case where special appeal preferred by the Appellant against the judgment of the learned Single Judge resulted in dismissal, however matter travelled to the Hon"ble Apex Court and therein order of Division Bench was set aside. The matter has been remitted back to this Court to decide the issue as to whether Appellant is an "industry". The arguments were accordingly made by both the parties limited to the issue aforesaid.

7. So far as the Respondent No. 2 is concerned, he has raised his objections regarding consideration of material now placed before this Division Bench, that too, while nothing was submitted in the written statements before the Labour Court and no evidence was led to substantiate the ground that Appellant does not fall within the definition of "industry". We have gone through the record and find that arguments raised by the Respondent No. 2 to that effect is correct. It is a case where aforesaid issue as to whether Appellant falls within the definition of "industry" was not before the Labour Court as is clearly coming out from bare perusal of the award itself. While deciding the issue No. 2, it was noted that no objection has been raised that Appellant does not fall within the definition of "industry", Aforesaid is the factual position of this case. However, in view of the order of the Hon"ble Apex Court, we are deciding the issue as to whether Appellant falls within the definition of "industry" as provided under the Act of 1947.

8. Perusal of the appeal shows that Appellant has mainly relied upon the objects for which Appellant Council was created. Based on the aforesaid, it is urged that none of the objects of the Appellant Council satisfy the definition of "industry" as provided under the Act of 1947. We have perused the objects of the Appellant Council and find that apart from research in Ayurveda and Siddha, the objects provide for acceptance of gift, donation and subscription in cash as well as securities. It further provides object to investigate and deal with the funds and monies of the Central Council. This is apart from holding temporarily or permanently movable or immovable property and sell, lease, mortgage and exchange and otherwise transfer any of such properties. Some of the objects are reproduced hereunder for ready reference:

(i) To borrow or raise monies with or without security or on security mortgage, charge, hypothecation or pledge of all or any of the immovable or movable properties belonging to the Central Council or in any other manner whatever;

(j) To invest and deal with the funds and monies of the Central Council or

entrusted to the Central Council not immediately required in such manner as may from time to time be determined by the Governing Body of the Central Council; and

(m) To sell, lease, mortgage and exchange and otherwise transfer any of the properties movable or immovable of the Central Council provided prior approval of the Central Government is obtained for the transfer of immovable property.

9. Perusal of the aforesaid shows that Council is having objects to deal with funds and monies of the Council. Investment of any fund and money is to secure gain, thus it is a case where Appellant Council is not undertaking research work solely for the purpose of Government as was the case of Physical Research Laboratory (supra) Therein, it was found to be a research institute of the Central Government engaged in carrying fundamental research regarding the formation and evolution of the Universe and the atmosphere of the earth, thus it not held to be "industry". The object of the laboratory in the aforesaid case is quite different than in this case. The issue as to whether Research Institute falls within the definition of "industry" or not was subject matter of decision in Full Bench judgment of the Hon"ble Apex Court in the case of Bangalore Water Supply and Sewerage Board (supra). Therein, in para 113 it was held thus:

Does research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received, it magnificently on this gratified and grateful earth, thanks to conversion of his inventions into, money a plenty. Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an Organisation, propelled by systematic activity, modeled on co-operation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit motive, are industries.

10. Perusal of the aforesaid para shows that even if Research Institute runs without profit motive, it is held to be "industry". In the light of the Full Bench judgment of the Hon"ble Apex Court, we cannot take a different view. So far as the case of Physical Research Laboratory (supra) is concerned, on facts, it is

distinguishable. In the present case, objects of the Appellant Council shows many other activities than of research and the research work is not meant exclusively for the Government. Thus, the case of Physical Research Laboratory (supra) has no application to this case.

11. Question now comes as to whether Council is discharging sovereign functions. Perusal of the objects do not show that Council is discharging sovereign functions of the State. The judgement cited by the Appellant in the case of Chief Conservator of Forests (supra) goes against Appellant as therein work undertaken by the Department was not recorded to be part of sovereign functions of the State. The Appellant has failed to show as to how function discharged by them are sovereign functions of the State. In absence of any material to that effect, argument cannot be accepted.

12. In view of discussion made above, we have no hesitation to hold that the Appellant could not make out a case that it does not fall within the definition of "industry" as provided under the Act of 1947. Accordingly, the only issue argued before us is decided against Appellant. The appeal is dismissed with no order as to costs.