

**(2006) 03 KAR CK 0066**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 38314 of 2001**

Deputy Conservator of Forests, Social Forestry Project and  
Another

APPELLANT

Vs

T.K. Girija

RESPONDENT

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**Date of Decision :** 14-03-2006

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2 (j), 25 F

**Citation :** (2006) 2 KarLJ 620 : (2006) 2 KCCR 979

**Hon'ble Judges :** Anand Byrareddy, J

**Bench :** Single Bench

**Advocate :** Honnappa, High Court Government Pleader, for the Appellant; S.B. Mukkannappa and H.N. Nagaraja, for the Respondent

**Final Decision :** Allowed

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## Judgement

Anand Byrareddy, J.—The petitioner challenges the award in favour of the workman primarily on the ground that the Labour Court was in error in holding that the petitioner was an industry and therefore there was an industrial dispute for adjudication.

2. The contention gives rise- to an important question, which has come in for consideration before the Supreme Court earlier. In the present case, the petitioners are the Deputy Conservator of Forests and the Range Forest Officer of Social Forestry Project, Zilla Panchayat, Chickmagalur. The respondent was said to have been engaged as a Forest Motivator. From the material on record, it is not disclosed as to the activity, the parties were engaged in, in contending that the petitioners were part of an industry. The aspect, whether the petitioners were a part of an industry, has been summarily addressed by the Labour Court at paragraph 6 of its award. There is no discussion in arriving at its finding that the petitioners' establishment was an industry and that the respondent was a workman. In this regard, the judgment of the Supreme Court in the case of Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc.,

may be usefully referred to. In the said case, the Chief Conservator of Forests was before the Supreme Court, the question that arose for consideration was whether the Forest Department of the State of Maharashtra was an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, which definition has been adopted by the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and in answering this question, it was noticed by the Supreme Court that the question had not been raised before the Industrial Disputes Tribunal and it is because of that, that the High Court upon being approached against the award of the Industrial Court, allowed the point to be agitated. The Supreme Court, however, had felt that in view of the importance of the question the contentions may be gone into. But since, the respondents-workmen had urged that the dispute was fairly old and on remand to the Industrial Court, the workmen would suffer a second round of litigation, a direction was given to the parties to place the factual data on the record of the Supreme Court itself and on that basis, it was contended that the Forest Department was not an "industry" and accordingly, the Supreme Court proceeded to consider the question whether the Forest Department was an industry, firstly referring to the test laid down in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, namely, "the dominant nature test", which was spelt out by extracting the relevant portion, as follows.?

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" as in the case of University of Delhi and Another Vs. Ram Nath, , or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the The Corporation of the City of Nagpur Vs. Its Employees, , will be true test. The whole undertaking will be "industry" although those who are not workmen" by definition may not benefit by the statutes.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

3. The Supreme Court has held that as per the Bangalore Water Supply and Sewerage Board's case, sovereign functions, "strictly understood", alone qualify for exemption and not the welfare activities or economic adventures undertaken by the Government and further, even in the departments discharging sovereign functions, if there are units which are industries and are substantially severable,

they can be considered as industries. As to which activities of the Government could be called sovereign functions, strictly understood, had not been spelt out in the aforesaid case and after considering other judgments on the aspect, has held that:

12. We may not go by the labels. Let us reach the hub. And the same is that the dichotomy of sovereign and non-sovereign functions does not really exist, it would all depend on the nature of power and manner of its exercise, as observed in para 23 of *N. Nagendra Rao and Co. Vs. State of Andhra Pradesh*, . As per the decision in this case, one of the tests to determine whether the executive function is sovereign in nature is to find out whether the State is answerable for such action in Courts of law. It was stated by Sahai, J., that acts like defence of the country, raising armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory, are functions which are indicative of external sovereignty and are political in nature. They are, therefore, not amenable to the jurisdiction of ordinary Civil Court inasmuch as the State is immune from being sued in such matters. But then, according to this decision the immunity ends there. It was then observed that in a welfare State, functions of the State are not only the defence of the country or administration of justice or maintaining law and order but extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. Because of this the demarcating line between sovereign and non-sovereign powers has largely disappeared.

And then on the facts of the case itself before the Supreme Court, has addressed the particular activities that were undertaken by the Chief Conservator of Forest in arriving at its finding that the Forest Department could be said to be an industry.

This judgment again came up for consideration in a later judgment of the Supreme Court in the case of *State of Gujarat and Others Vs. Pratamsingh Narsinh Parmar*, wherein a clerk in the Forest Department had challenged his termination, as being in violation of Section 25-F of the Industrial Disputes Act, 1947. The workman had approached the High Court and the High Court had held that the termination was without compliance with Section 25-F of the Act and held that the termination was bad. The State had taken a contention that the Forest Department, to which the respondent was recruited, was not an industry. The Supreme Court found that the High Court had, without examining the nature of duties of the respondent, as well as the job of the establishment where he had been recruited, following the judgment in *Bangalore Water Supply and Sewerage Board's case*, came to the conclusion that the impugned order of termination is vitiated for non-compliance of provisions of Section 25-F of the Act. This was challenged in appeal. A Division Bench, in appeal, confirmed the said judgment of the learned Single Judge. The Supreme Court however, held that if a dispute arises as to, whether a particular establishment or a part of it is an industry, it would be for the person concerned, who claims the same to be an industry to

give positive facts showing that it (the establishment) constitutes an industry. Ordinarily, a Department of the Government cannot be held to be an industry and rather it is a part of the sovereign function. To find out whether the respondent in the writ petition had made any assertion that with regard to the duty with which he was discharging and with regard to the activities of the organization where he had been recruited, the Supreme Court found that there was no assertion at all. And therefore, in the absence of such assertion, in the writ petition indicating the nature of duty discharged, as well as job of the respondent, the High Court was in error. The Supreme Court also took note of the fact that in the case of Chief Conservator of Forests, was relied upon in coming to the finding that the Forest Department was not an industry. And it is pointed out by the Supreme Court in the said judgment that insofar as the finding in the Jagannath Maruti Kondhare's case is concerned, it was based on the material placed on record and therefore a finding was rendered that it was an industry and in the case on hand before the Supreme Court, it was held that the it was necessary for the person claiming the department as an industry to establish the same.

Given this state of the law, in the case on hand, there is no assertion, as is said to be required by the Supreme Court in identical cases, in this regard.

4. Hence, on this short ground, the writ petition deserves to be allowed. However, it is found as a fact that the respondent was employed with the petitioner for more than 240 days in a calendar year, preceding the refusal of employment the question whether, the petitioner is an industry or not, however not having been considered in the manner it was required to be done as laid down by the Supreme Court, the matter requires to be remitted for a reconsideration by the Tribunal.

5. Accordingly, the petition is allowed subject to reinstatement of the respondent, pending adjudication of the question, whether the petitioner is an industry or not. The petitioner shall however, not to be obliged to pay any back wages to the respondent. The matter is remitted to the Labour Court for fresh adjudication on the question, whether the petitioner is an industry. Liberty is granted to the respondent to place such additional evidence before the Labour Court, for its consideration of the question.