
(1984) 12 OHC CK 0012

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 1502 to 1514 of 1980

Divisional Forest Officer, Kendu leaf Division

APPELLANT

Vs

Jaganath Pradhan and Another and Others

RESPONDENT

Date of Decision : 21-12-1984

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1985) 50 FLR 129 : (1985) 1 OLR 125

Hon'ble Judges : S.C. Mohapatra, J; R.C. Patnaik, J

Bench : Division Bench

Advocate : Additional Government Advocate and Addl. Standing, for the Appellant; J.K. Tripathy, (in O.J.C. No. 1514/80), for the Respondent

Final Decision : Dismissed

Judgement

R.C. Patnaik, J.—The short question that falls for consideration in this batch of writ applications filed by the Divisional Forest Officer, Kendu Leaf Division, Deogarh, challenging the decision of the Labour Court granting compensation to the employees on their retrenchment, is whether the Kendu Leaf Division is an "Industry" ?

2. Each of the employees filed an application u/s 33C(2) of the Industrial Disputes Act against the petitioner claiming retrenchment benefits. Each of them claimed to have worked for more than 240 days in a full calendar year.

3. Their factual assertions were not controverted. Objection to the maintainability of the application was raised on the ground that the Kendu Leaf Division was not an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act. The Labour Court granted the relief holding that the Kendu Leaf Division was an industry.

4. Mr. R.K. Patra, the learned Additional Government Advocate, has urged that the venture carried on by the Kendu Leaf Division was in discharge of sovereign functions. The functioning is in exercise of statutory powers. Hence, the

requirements of Section 2(j) were not satisfied.

Mr. J.K. Tripathy, the learned counsel for the employees, has submitted that the Labour Court has correctly appreciated the ratio laid down by the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, and having regard to the nature of the venture, the Kendu Leaf Division is an industry.

5. Kendu leaves trade in Orissa was originally regulated by the Orissa Kendu Leaves (Control and Distribution) Order, 1949 providing for issue of licence to persons trading in Kendu leaves, fixing of the minimum rates of purchase and the main purpose of the Order was to prevent indiscriminate and unrestricted competition in the trade in Kendu leaves and to protect the growers and pluckers from exploitation, See Jagadish Patel Vs. Patel Tobacco Co. and G.C. Sankar, .

The 1949 order was replaced by another order issued in 1950. In 1961, the Orissa Kendu Leaves (Control of Trade) Act (28 of 1961) was enacted by the State Legislature. By this Act, the State assumed the monopoly to trade in Kendu leaves.

6. With the broadening of the welfare activities of the State into the field traditionally occupied by private businessmen entered the State and by the Act conferred the monopoly in the trade to itself. The venture, therefore, is essentially a trading one and that should have been the short commonsense answer. However, it has been argued that the trader being the Government or a body discharging statutory function, the undertaking discharging sovereign or statutory function is not an "Industry" Reference has been made to Ralia Ram's case A. I. R. 1955 S.C. 1039.

In Ralia Ram's case a suit was filed for recovery of the gold seized by a police officer from Ralia Ram or in the alternative for payment of its value. Though it was held that the loss was due to the negligence of the police officer, the discharging of function was in discharge of powers which could be properly characterised as sovereign power. The employment in question being of a category which could claim the special characteristic of sovereign power, an action against the State for the tortious act of the employee discharging sovereign power was not maintainable. We accept the following sentence which has some relevance for our purpose:

"...If a tortious act is committed by a public servant and it gives rise to a claim for damages, the question to ask is : was the tortious act committed by the public servant in discharge of statutory functions which are referable to, and ultimately based on, the delegation of the sovereign powers of the State to such public servant ?....."

We would advert to the statutory nature of the functionary after noticing Bangalore Water Supply case.

In Bangalore Water Supply case, it was held by Justice Krishna Iyer (per majority):

"Industry" as defined in Section 2(j) has a wide import.

(a) where (i) systematic activity, (ii) organized by cooperation between the employer and employee (the direct and substantial element is commercial) (iii) for the production and or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, i.e., making, an a large scale prasad or food) prima facie, there is an industry in that enterprise.

(b) absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) the true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) if the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.....sovereign functions, strictly understood (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(e) 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)."

(underlining supplied)

Chandrachud, C. J., generally agreed with the majority and observed:-

"One of the exceptions carved out by the Court is in favour of activities undertaken by the Government in the exercise of its inalienable functions under the Constitution, call it regal, sovereign or by any other name. I see no justification for excepting these categories of public utility activity from the definition of "industry". If it be true that one must have regard to the nature of the activity and not to who engages in it, it seems to me beside the point to enquire whether the activity is undertaken by the State, and further, if so, whether it is undertaken in fulfilment of the State's constitutional obligations or in discharge of its constitutional functions. In fact, to concede the benefit of an exception to the State's activities which are in the nature of sovereign functions is really to have regard not so much to the nature of the activity as to the consideration who engages in that activity; for, sovereign functions can only be discharged by the State and not by a private person. If the State's inalienable functions are excepted from the sweep of the definition contained in Section 2(j), one shall have unwittingly rejected the fundamental test that it is to determine whether the activity which ought to determine whether the activity is an industry. Indeed, in this respect, it should make no difference whether, on the one hand, an activity is undertaken by a corporate body in the discharge of its statutory functions, or, on the other, by the State itself in the exercise of its inalienable functions. If the water supply and sewerage schemes or fire fighting establishments run by a Municipality can be industries, so ought to be the

manufacture of coins and currency, arms and ammunition and the winning of oil and Uranium. The fact that these latter kinds of activities are, or can only be, undertaken by the State does not furnish any answer to the question whether these activities are industries. When undertaken by a private individual they are industries. Therefore, when undertaken by the State, they are industries. The nature of the activities is the determining factor and that does not change according to who undertakes it..."

The true focus, therefore, being functional and the decisive test being the nature of the activity, it is irrelevant who is the employer; whether the Government or a body exercising statutory functions. The functions are not sovereign functions merely because they are discharged under statutory powers. The true test is the nature of the function. When the venture is undertaken in the nature of a trade, as in this case, the function does not become sovereign because the State has created a monopoly for itself or its instrumentalities are discharging statutory functions under a statute enacted to regulate the trade. In our opinion, the test laid down in Bangalore Water Supply case is satisfied in this case. We hold that the Kendu Leaves Division is an undertaking engaged in a systematic activity organised by co-operation between employer and employee for production and or distribution of goods and services calculated to satisfy human wants and wishes and the nature of the enterprise is such which any private citizen could engage in.

The decision of the Labour Court is, therefore, unassailable. The writ application is accordingly dismissed with costs. Consolidated hearing fee is assessed at Rs. 300/-.

S.C. Mohapatra, J.

7. I agree.