
(1997) 01 P&H CK 0169
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6882 of 1991

Divisional Forest Officer, Social Forestry Project	APPELLANT
Vs	
Presiding Officer, Industrial Tribunal and Another	RESPONDENT

Date of Decision : 06-01-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 2, 25F

Citation : (1997) 2 LLJ 1183 : (1997) 116 PLR 537

Hon'ble Judges : V.K. Jhanji, J;Iqbal Singh, J

Bench : Division Bench

Advocate : S.V. Rathee, for the Appellant; Puneet Bali, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—The sole question to be determined in a bunch of writ petitions, namely, C.W.P.Nos.6882, 6883,6808,7993, 17370 of 1991,4550 & 14993 of 1992, 2604 of 1993 and 15079 of 1994, is whether the Forest Department of State of Haryana is an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act (Hereinafter referred to as the Act). Since common question of law and facts is involved in all the writ petitions, the same are being disposed of by a common judgment. For facility of reference, facts are taken from Civil Writ Petition No. 6882 of 1991.

2. Second Respondent was appointed as a daily-rated worker by the Divisional Forest Officer, Hissar, on October 3, 1978. He worked as such till December 18, 1987 when his services were terminated. Since according to the workman his services had been terminated without any notice or charge-sheet, he sought reference u/s 10 of the Act. He claimed that he being a workman u/s 2(s) of the Act and had a continuous service of more than 240 days during a period of 12 calendar months preceding the date of termination of services, is entitled to benefit of Section 25-F of the Act. The matter was referred by the Government to the first respondent who vide award dated December 13, 1990 found that the management had not complied with the provisions of Section 25-F of the Act. It

was held that the workman was entitled to reinstatement with other benefits. In regard to objection taken by the Divisional Forest Officer that the Forest Department is a department of Haryana State and it cannot be termed as an "industry", the first respondent observed as under:

"The Forest Department of the State, which grows trees on land, arranges the sale of timber and incurs loss or pockets profits stands on the same footing as Irrigation Department and Public Health Department of the State Government. It is industry in the light of the provisions of Section 2(j) of the Act. Both these issues are found against the management. The reference is maintainable and this Court has jurisdiction to try and decide the present reference."

In view of the finding that services of the workman had been terminated without any notice or charge-sheet and that the Labour Court had the jurisdiction to decide the reference, the order terminating the services of the workman was set aside and he was ordered to be rein-stated with full back wages and benefit of continuity of service. The award of the Labour Court is being impugned in this writ petition. Similarly, in all the writ petitions except Civil Writ Petition No. 12620 of 1993, the awards; passed by the Labour Court in various references are being challenged.

3. While the proceedings were pending before the Labour Court, no material worth the name for showing the nature of activities or work carried on by the Forest Department was brought on record. In order to meet any possible objection from the side of workman and to fill up the lacuna, the Principal Chief Conservator of Forests, Haryana, has filed an affidavit dated July 26, 1996 for showing the activities carried on by the Forest Department. In his affidavit, he has stated that the principal aim of the Forest Department is to ensure ecological balance, including atmospheric equilibrium which are vital for sustenance of all life forms, human, animals and plants. He in the affidavit has further stated that the National Forest Policy Resolution, 1988 has been adopted by the State Government. A copy of the National Forest Police Resolution, 1988, issued by the Ministry of Environment and Forests, Government of India, New Delhi, has also been placed on record. On the basis of National Forest Policy, it has been stated in the affidavit that the activities carried on by the Forest Department are as follows:

"(i) Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the Forest of the State.

ii) Conserving the natural heritage of the State by preserving the remaining natural forest with variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.

iii) Checking soil erosion and denudation in the catchment areas, of rivers, lakes, reservoir in the interest of soil and water conservation for mitigating floods and droughts and for the retardation of siltation of reservoirs.

- iv) Checking the extension of sand-dunes into Haryana from areas of Rajasthan.
- v) Increasing substantially the Forest tree cover in the State through massive afforestation and Social Forestry Programmes, especially on all degraded and unproductive lands to create and sustain environmental stability."

Apart from the aforesaid activities, it has also been stated that the polythene bags required for raising seedlings are manufactured at Kurukshetra, Hissar and Mohindergarh by the Haryana Forest Development Corporation. The Principal Chief Conservator of Forests in his affidavit has further stated that the Forest Department employs its organisational establishment on regular basis, whereas the vast labour force required for various forestry operations is engaged on daily wage basis. The Saw Mills installed by the Department are for demonstration purposes. By adopting radial sawing technique and solar seasoning technique, developed by the Forest Research Institute, Dehradun, Eucalyptus wood is being used as timber and in furniture making. He has further stated that a World Bank Aided Social Forestry Project was in operation in Haryana from the years 1982-83 to 1990-1991. The affidavit further goes on to state that most of the work undertaken under the Social Forestry Project related to environment improvement, institution building and enrichment of natural resources of Panchayats/communities. It has been stated that the primary and essential duty of the Forest Department is to protect the forests and for this purpose, the officers/officials have been given powers enjoyed by the police officials and also been vested with some powers of the judicial Courts. Besides the regulatory functions of the Department, the other work of afforestation and their maintenance under various projects/schemes is done for the purpose of improvement and maintaining of ecological balance and environmental stability, which is in the universal interest.

4. On the basis of the affidavit and the basic objectives laid in the National Forest Policy, as adopted by the Department of Forests, State of Haryana, Counsel for the State submitted that under Article 48-A of the Constitution it is the constitutional function of the State to protect and improve the environment and to safeguard the forest and wild life of the country, and therefore, Department of Forest is not an industry. In support of his argument, counsel referred to the following observations of the Apex Court in *Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc.,* :

"India as a sovereign socialist, secular democratic republic has to establish an egalitarian social order under rule of law. The welfare measures partake the character of sovereign functions and the traditional duty to maintain law and order is no longer the concept of the State. Directive principles of State Policy enjoin on the State diverse duties under Part IV of the Constitution and the performance of the duties are constitutional functions. One of the duties of the State is to provide telecommunication service to the general public and an amenity and so is one essential part of the sovereign functions of the State as a welfare State. It is not, therefore, an industry."

Counsel also referred to a Division Bench judgment of this Court in State of Punjab through Assistant Director, Horticulture, Faridkot v. The Presiding Officer, Labour Court, Bhatinda and Anr. 1994 1 106 P.L.R. 266 wherein the Horticulture Department has been held not to be an "industry". Counsel further argued that every department of the State exercises sovereign functions and, therefore, the Forest Department is outside the definition of word "industry" to make the provisions of the Act inapplicable. In answer to these submissions, Mr. Puneet Bali, Advocate for the workman contended that the Forest Department is not discharging any sovereign functions of the State as its main activity involves plantation of trees, development of green lands and preservation of wild life and forests in the State. He contended that forest department has come to be known as one of the biggest revenue earner department in the State exchequer. He also contended that even if it is taken that the Forest Department is not making any profits, then also it is of no consequence because the activity carried on by the department is systematic and coordinated and bears resemblance to what is found in trade or business.

5. It is true that the observations of the Apex Court in Theyyam Joseph's case (supra) do lend support to the argument of the counsel for the State but having regard to the activities carried on by the Forest Department and the test laid down in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , in our opinion, it cannot be said that the Department of Forests, State of Haryana, is not an "industry".

6. In Bangalore Water Supply and Sewerage Board's case (supra), their Lordships of the Supreme Court had considered the concept and scope of term "industry" as used in Section 2(j) of the Act. Their Lordships observed as under:

"(1) "Industry" as defined in the Sub-section has a wide import.

(a) Where (i) systematic activity, (ii) organised by co-operation between employer and employee (the direct and substantial element is chimerical), (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), prima-facie there is an industry in the 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 organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

(2) Although the sub-section uses the words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) "Undertaking" must have a contextual and associated meaning as explained in Banerji's case; so also service, calling and the like. Hence all organised activity possessing the triple elements of systematic activity, organised co-operation between employer and employee and production and distribution of goods and services calculated to satisfy human wants and wishes, although not trade or business, may still be industry provided the nature of the activity, namely, the employer-employee basis bears resemblance to what is found in trade or business. This takes into the fold of industry, undertakings, callings, services and adventures "analogous to the carrying on of trade or business". All features other than the methodology of carrying on the activity, namely, in organising the co-operation between employer-employee may be dissimilar but it does not matter if on the employment terms there is analogy.

(3) xxx xxx xxx

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

(b) 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."

Recently, a Three-Judge Bench of the Apex Court in Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare, etc. etc., , has held that the Forest Department of the State of Maharashtra is an "industry" within the meaning of Section 2(j) of the Act. The Apex Court also held that Pachgaon Parwuti Scheme framed as per the Government resolution based on the policy decision taken in April 1976 cannot be regarded as a part of inalienable or inescapable function of the State for the reason that the Scheme was initiated even to fulfil the recreational and educational aspirations of the people! Their Lordships of the Supreme Court observed "we are in no doubt that such a work could well be undertaken by an agency which is not required to be even an instrumentality of the State". In this judgment, their Lordships have stated that definition of "Industry" is of very wide import and should be interpreted in a manner so as

not to whittle down but to advance the object of the Act. In paragraphs 12 and 13, their Lordships stated:

"12. We may not go by the tables. Let us reach the huh. And the same is that the dichotomy of sovereign and non-sovereign functions docs not really exist - it would all depend on the nature of the power and manner of its exercise, as observed in para 23 of Nagendra Rao's case. 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.

13. The aforesaid shows that if we were to extend the concept of sovereign function to include all welfare activities as contended on behalf of the appellants, the ratio in Bangalore Water-supply case would get eroded, and substantially. We would demur to do so on the face what was stated in the aforesaid case according to which except the strictly understood sovereign function, welfare activities of the State would come within the purview of the definition of industry; and, not only this, even within the wider circle of sovereign function, there may be an inner circle encompassing some units which would be considered as industry if substantially severable."

It is, thus, clear from the test laid down by the Apex Court in Bangalore Water Supply and Sewerage Board's case (supra) and the observations of the Supreme Court in Jagannath Maruti Kondhare's case (supra) that sovereign functions strictly understood (alone) qualify for an exemption not the welfare activities or economic adventures undertaken by the Government or statutory bodies. Even in the Government departments discharging sovereign functions, if there are units which are severable, then they can be considered to come within the meaning of "industry" as given in Section 2(j) of the Act. Simply because the Forest Department of the State of Haryana has a noble objective and has undertaken the Forest Development Projects, by no stretch of imagination it can be said that the forest department discharges sovereign functions to qualify for exemption. The fact that the forest department is engaged in activities which do not necessarily make profits, does not alter the fact that it employs workers like the second respondent and carries on systematic activities which provide services for

satisfying human wants for having pollution-free environment. In our opinion, therefore, having regard to the activities carried on by the forest department in the light of the test laid down in Bangalore Water Supply and Sewerage Board's case, the forest department is an "industry" as defined in Section 2(j) of the Act.

7. The judgment of State of Punjab through Assistant Director, Horticulture, Faridkot 's case (supra) is of no help to the State counsel as he has failed to bring on record the material on the basis of which the Division Bench had held that the Horticulture Department being a part and parcel of Agricultural Department is not an "industry". In absence thereof, it cannot be said that the Horticulture Department is at par with the Forest Department of Haryana or the activities carried on by the Horticulture or Agricultural Department are akin to the activities carried on by the Forest Department.

8. In view of our finding that the Forest Department of the State of Haryana is an industry as defined in Section 2(j) and there being no challenge to the finding of Labour Court in regard to non-compliance of provisions of Section 25-F of the Act, the writ petitions, CWP No. 6882, 6888, 7993 and 17370 of 1991, 4950 and 14993 of 1992, 2604 of 1992 and 15079 of 1994 filed on behalf of the State of Haryana are to be dismissed. We do so. No costs.

9. In Civil Writ Petition No. 12620 of 1993. as per case set out in the petition, petitioner therein was appointed as Typist in the Divisional Forest Office, Gurgaon. on daily wages on March 20, 1987 and continued in service till February 11, 1991 when he was removed from service and not allowed to join his duties without any reason. He inter alia has prayed that Respondents 1 to 4 be directed to reinstate him in service as after his removal Respondents 5 and 6 were appointed without any offer being made to him for re-employment. In the written statement, the case of the official respondents is that the petitioner left the work on December 31, 1990 of his own and so, is not entitled to reinstatement. In the replication, petitioner has reiterated that he never left the service of his own will. Since disputed questions of fact have been raised in this petition and the petitioner has come to this Court without seeking an alternative remedy of reference for adjudication of the dispute, it is not possible for this Court to give any relief prayed for in this writ petition. Accordingly, Civil Writ Petition No. 12620 of 1993 shall stand dismissed, with a liberty to the petitioner to seek a reference for adjudication of the dispute raised by him.