

(1993) 09 OHC CK 0017
In the Orissa High Court
Case No : O.J.C. No. 656 of 1993

Executive Engineer, National Highways	APPELLANT
Vs	
Industrial Tribunal and Another	RESPONDENT

Date of Decision : 09-09-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1995) 1 LLJ 470

Hon'ble Judges : G.B. Patnaik, J;B.N. Dash, J

Bench : Division Bench

Advocate : P.K. Mohanty, for the Appellant; N.K. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The short question that arises for consideration in this writ application is whether the National Highways Division under the Works Department of the Government is an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947.

2. The Government of Orissa in the Labour Department in exercise of the power conferred upon it by Sub-section (5) of Section 12 read with Section 10(1) of the Industrial Disputes Act (hereinafter referred to as "the Act"), referred the following dispute for adjudication of the Industrial Tribunal:

"Whether the action of the Executive Engineer, N.H. Division, Baripada, in terminating the services of Sri Parakshita Behera and 37 others with effect from September 27, 1989, initially working as N.M.Rs. from the year 1976 and subsequently made D.J.L.Rs. from the year 1987 is legal and/or justified? If not, to what relief are they entitled?"

3. The petitioner in the objection filed before the Tribunal took a stand, apart from several other stands with which we are not concerned in the present writ application, that the National Highways Division, Baripada, was not an "Industry" and, therefore, the Industrial Tribunal 2 had no jurisdiction to entertain and

adjudicate the dispute. Though such a stand was taken in the written objection filed by the petitioner, not an iota of material was placed before the Tribunal in support of the said stand. The Tribunal, therefore, following the decision of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, and taking judicial notice of the fact that tolls and taxes are collected over the bridges constructed by the National Highways Division, came to the conclusion that the said National Highways Division is an industry. On the merits of the reference, the Tribunal held that the workmen had been illegally and arbitrarily retrenched without complying with the provisions of Section 25-F of the Act and accordingly the Tribunal directed reinstatement in service with full backwages. The award of the Tribunal has been annexed as Annexure 11.

4. The only contention raised by Mr. P.K. Mohanty appearing for the petitioner is that the finding of the Tribunal that the National Highways Division is an industry is unsustainable in law and in support of this contention he places reliance on a Full Bench decision of the Punjab and Haryana High Court in the case of State of Punjab Vs. Kuldeep Singh and Another, . In the aforesaid cases, on the basis of the materials produced before the court, the learned judges of the Punjab and Haryana High Court came to the conclusion that the establishment, construction and maintenance of the National State Highways was an essential Governmental function and was not analogous to trade or business and consequently it could not come within the ambit of an "industry" as defined under the Act. But the question that arises for consideration in the present case is whether in the absence of any material produced by the employer, is it permissible for the Tribunal to hold that the National Highways Division is not an "industry"? In other words, can the conclusion of the Tribunal in the instant case be held to be erroneous. The answer must be in the negative. What activities would constitute an industry has been settled by the apex court in Bangalore Water Supply's case, (supra). In that case, it has been laid down by the Supreme Court that the regal functions described as primary and inalienable functions of the State would not come within the concept of industry. But such regal functions shall be confined to legislative power, administration of law and judicial power. It has also laid down in the said case that even in the Department discharging several functions, if there are units which are industries and they are severable, then it can be construed to come within the meaning of Section 2(j) of the Act. According to Krishna Iyer, J., the material question is, what is the nature of the actual function assumed - is it a service that the State could have left to private enterprise, and if so fulfilled, could such a dispute be "industry"? The learned single judge further observed, (p. 375)

"the nature of actual function and of the pattern of organised activity is decisive."

5. This being the position in law and the petitioner not having produced an iota of material to indicate as to the nature of the actual functions of the National Highways Division, we see no infirmity with the conclusion of the Industrial Tribunal. It would be appropriate to notice in this connection a later decision of

the Supreme Court in the case of Des Raj and Ors Vs. State of Punjab and Ors, , wherein their Lordships of the Supreme Court held that the Irrigation Department of the State of Punjab is an industry within the meaning of Section 2(j) of the Act. In the Supreme Court cases referred to above, several reports had been produced to give "a full picture of the activities of the Irrigation Department. Applying the decision laid down by the Supreme Court in the Bangalore Water Supply's case, (supra) and considering the activities of the Irrigation Department of the Government of Punjab, their Lordships held (p.162):

"... we do not think these facts found in this case can take the Irrigation Department outside the purview of the definition of "industry" . . . particularly with reference to the dominant nature test evolved by Krishna Iyer, J."

6. The Division Bench of the Gujarat High Court in the case of P. W.D. Employee's Union v. State of Gujarat 1987 LIC 89, came to hold that the daily rated workers working in the Public Works Department in construction and maintenance of dams would be workers and the department would come within the definition of "industry" u/s 2(j) and in the aforesaid case, the Full Bench decision of the Punjab High Court, on which Mr. Mohanty had placed reliance, was referred to and dissented from. So far as this court is concerned, there are two reported decisions, namely, Ananda Chandra Swain Vs. State of Orissa and Another, , where Balimela Dam Project was held to be an industry and the case of Chief Engineer Irrigation, Orissa v. Harihar Patra 1977 LIC 1033, where Salandi Irrigation Project was held to be an industry. Under the National Highways (Fees for Use of Permanent Bridges) Rules, 1992, provision has been made for collection of fees from every mechanical vehicle crossing a permanent bridge, vide Rule 6. The Tribunal, therefore, has not committed any error by taking judicial notice of the fact that tolls and fees are collected over the bridges constructed by the National Highways Division. In this view of the matter and the employer having chosen not to place on iota of material before the Tribunal to indicate the nature of the activity of the National Highways Division so as to exclude the same from the purview of the definition of "industry" in Section 2(j) of the Act, we see no error with the conclusion of the Tribunal so as to be interfered with by this court in a writ certiorari. The writ application accordingly fails and is dismissed. No costs.