(1960) 07 BOM CK 0005

In the Bombay High Court

Case No : Reference I.T. No. 225 of 1959

Sangli City Municipality APPELLANT

Vs

Its Workmen RESPONDENT

Date of Decision : 12-07-1960

Acts Referred:
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (1960) 2 LLJ 459

Hon'ble Judges : P.D. Sawarkar, J

Bench : Single Bench

Judgement

1. This industrial dispute was referred to me under S. 10(1)(d) of the Industrial Disputes Act, 1947, by Labour and Social Welfare Department order No. AJS. 3559-H, dated 12 November, 1959. The demands of the workmen relate to

(1) salary scales of employees in octroi, mechanical, water-works, establishment departments and other branches;

(2) officiating allowance;

(3) adjustment;

(4) refund of pay to five employees; and

(5) cycle allowance to valvemen.

2. Sri A. V. Ghate, advocate for the municipality, has raised a preliminary objection that the employees of the octroi department are not workmen because that department is not an activity of the municipality which may be called to be analogous to "industry." On behalf of the workmen Sri B. G. Naik examined one Chandrakant Neminath Shete, an octroi clerk. He has stated that octroi clerks are transferred to other departments and clerks from other departments are transferred to octroi department. He has given three such instances including his own. In cross-examination he was asked whether it was not true that when he was transferred to other departments his scale was higher than the scale of an

octroi clerk. He admitted that fact. But the fact remains that octroi clerks in this municipality can be transferred to other departments and vice versa.

3. The argument that is now being advanced by Sri Ghate has been advanced now for over seven years ever since the Supreme Court decided the case of D. N. Banerji v. P. R. Mukerjee 1953 I L.L.J 195. But now it may safely be said that the Supreme Court has finally act this controversy at rest by its decision in the The Corporation of the City of Nagpur Vs. Its Employees, . After an exhaustive discussion of the law on the subject, their lordships have summarized their views as follows :

Page 535 : "The result of the discussion may be summarized thus :

(1) The definition of ''industry'' in the Act is very comprehensive. It is in two parts; one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act.

(2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and that which pertains to private or personal employment.

(3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power.

(4) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation.

(5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act.

(6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act."

Then their lordships have taken up the different departments of the Corporation and have shown how each one of them falls within the definition of "industry." They did not take up the octroi department because the workmen had not preferred an appeal; but they took the tax department and showed how employees of that department too were workmen. There is fundamentally no distinction between a tax department and an octroi department. Both levy and collect a fee or a tax. In this connexion their lordships observe :

Page 537 : "There cannot be a distinction between property tax and other taxes collected by the municipality for the purpose of designating the tax department as an industry or otherwise. The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of ''industry,'' it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of ''industry,'' we should hold that the employees of the tax department are also entitled to the benefits under the Act."

Thus, not only on the ground of transferability from the octroi department to another and vice versa but on the broader ground stated above, their lordships included the tax department in "industry." So, in my opinion, no more discussion is necessary to hold that the employees of the octroi department are workmen. I therefore hold accordingly.

