
(1996) 07 AHC CK 0016
In the Allahabad High Court
Case No : C.M.W.P. No. 32617 of 1992

Sant Kumar Dubey

APPELLANT

Vs

Presiding Officer, Industrial Tribunal IV and Others

RESPONDENT

Date of Decision : 16-07-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 2, 25F

Citation : (1998) 3 LLJ 355 : (1997) 1 UPLBEC 424

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Niraj Upadhyaya, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

D.K. Seth, J.—Mr. Neeraj Upadhyaya, learned counsel for the petitioner raised a very short but interesting question, namely, whether the Public Works Department (P.W. D.) in its department relating to construction of road is an industry within the meaning of the Industrial Disputes Act, 1947, and thereby whether the petitioner is a workman entitled to settle the dispute with his employer through the machinery provided under the Industrial Disputes Act.

2. The facts leading to the case are that the petitioner was a temporary employee for a short period but had completed 140 days of work within a period of 12 months and that his services were terminated without complying with Section 25F of the Industrial Disputes Act. The Labour Court refused to entertain the dispute on the ground that P.W.D. under which the petitioner was employed was not an industry within the meaning of the ratio decided in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . It is this Award dated April 1, 1992 passed by the Presiding Officer, Industrial Tribunal, U.P. Agra, in Adjudication Case No. 21 of 1988 (Annexure 5) which has been challenged by means of this petition.

3. The Learned Standing Counsel appearing for the respondents supported the finding in the Award. It is the petitioner who has challenged the Award which operates against him.

4. The only question to be decided is as to whether the P.W.D. in its road construction department satisfies the test as laid down in the case of Bangalore Water Supply and Sewerage Board (supra) for being treated as an industry or not.

5. Mr. Neeraj Upadhyaya relied on the decision in the case of Bangalore Water Supply and Sewerage Board (supra), Gani Bahadur v. Labour Court, U.P. Lucknow 1986 52 FLR 725 (All) and Des Raj and Ors Vs. State of Punjab and Ors, in support of his contention that P.W.D. is an industry. He also relied on the decision in the case of Santosh Gupta Vs. State Bank of Patiala, , Gammon India Limited Vs. Niranjana Dass, and Jai Kishun v. U.P. Co-operative Bank Ltd., Lucknow 1989 2 UPLBEC 144 in support of his contention that the termination of service of the petitioner is retrenchment.

6. The question as to what "industry" and what constitute "industrial dispute" and who is workman has been deliberated by Hon"ble Supreme Court on many occasions with regard to different cases at different times depending upon the nature of the employer. Hon"ble Krishna Iyer, J. treated the decision in the case of D.N. Banerji Vs. P.R. Mukherjee and Others, as mariner's compass for judicial navigation, on the point. In the case of Bangalore Sewerage Board, (supra) Hon. Krishna Iyer, J. had traced the history of development of the definition "industry" "industrial dispute" and "workman", and had progressed inch by inch noticing the development as processed through various judgments after Banerjee's case (supra). A definition is ordinarily the crystallisation of a legal concept promoting precision and rounding off blurred edges but according to Hon. Krishna Iyer, J. the definition in Section 2(j) of the Industrial Disputes Act viewed in retrospect, has achieved the opposite, which was sought to be clarified in Bangalore Sewerage Board (supra). Sometimes active interrogatories tell better than bland affirmatives, is his opinion. Therefore, in the facts and circumstances of the case it is necessary to examine in the light of various decisions that cover the field as to whether department of construction of road in Public Works Department is an industry or not.

7. Before examining the concept in Bangalore Sewerage Board (supra) the observation of Lord Denning in the case of Hotel and Catering Industry Training Board v. Automobile Proprietary Limited, 1968 1 WLR 1526 at 1530, was referred by Krishna Iyer, J. as under:

"It is true that "the industry" is defined, but a definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give precision and certainly to a word or phrase which would otherwise be vague and uncertain but not to contradict it or supplant it altogether."

8. In the Banerji's case (supra) the Budge Municipality was held to be not an industry in discharging its normal duties made in the case of Bangalore Sewerage Board, (supra) to strengthen the ratio of Banerji's case (supra) in its application, away from different deviations and aberrations and not to supplant the ratio. It is held in the case of Bangalore Sewerage Board (supra) that the definition of employer (Section 2(g), "industry" (Section 2(j), "industrial dispute" (Section 2(k) and "workman (Section 2(a)) were taken as statutory dictionary and not popular parlance. Therefore, merely because the employer is a Government department or a local body (and & fortiori, a statutory Board, society or like entity) the enterprise does not cease to be an "industry". Likewise, what the common man does not consider as "industry" need not necessarily stand excluded from the statutory concept. While deliberating with the same the opinion expressed by Hon. Chandrashekara Aiyer, J., was quoted supporting this reasoning to the following extent.

"In the ordinary or non-technical sense, according to what is understood by the man in the street, industry or business means an undertaking where capital and labour cooperate with each other for the purpose of producing wealth in the shape of goods, machines, tools etc, and for making profits. The concept of industry in this ordinary sense applied even to agriculture, horticulture, pisciculture, and so on and so forth. It is also clear that every aspect of activity in which the relationship of employer and employee exists, or arises does not thereby become an industry as commonly understood. We hardly think in terms of an industry, when we have regard, for instance, to the rights and duties of master and servant or of a Government and its Secretariat or the members of the medical profession working in a hospital. It would be regarded as absurd to think so, at any rate the layman unacquainted with advancing legal concepts of what is meant by industry would rule out such a connotation as impossible. There is nothing however to prevent statute from giving the word "industry" and the words "industrial dispute" a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and to bring about in the interests of industrial peace and economy, a fair and satisfactory adjustment of relations between employers and workman in variety of fields of activity. It is obvious that the limited concept of what an industry meant in early times must now yield place to an enormously wider concept so as to take in various and varied forms of industry, so that dispute arising in connection with them might be settled quickly without much dislocation and disorganisation of the needs of society and in a manner more adapted to conciliation and settlement than a determination of the respective rights and liabilities according to strict legal procedure and principles. The conflicts between capital and labour have now to be determined more from the standpoint of status than of contract. Without such an approach, the numerous problems that now arise for solution in the shape of industrial disputes, cannot be tackled satisfactorily and this is why every civilised Government has thought of the machinery of conciliation officers, Boards and Tribunals for the effective settlement of disputes."

The dynamics of industrial law even if incongruous with popular understanding is this first proposition we derive from Banerji (supra).

"Legislation had to keep pace with the march of times and to provide for new situations. Social evaluation is a process of constant growth and the State cannot afford to stand still without taking adequate measure by means of legislation to solve large and momentous problems that arise in the industrial field from day to day almost."

9. In the said case enlarged acceptance of the statutory concept of industry and its actual circumscription was sought to be achieved and/ or instant case of consideration have been expressed in Banerji's case (supra) in the following terms:

"Do the definitions of "industry" "industrial dispute" and "workman" taken in the extended significance or exclude it? Though the word "undertaking in the definition of "industry" is wedged in between business and trade on the one hand and manufacture on the other, and though therefore it might mean only a business or trade undertaking, still it must be remembered that if that were so, there was no need to use the word separately from business or trade. The wider import is attracted even more clearly when we look at the latter part of the definition which refers to "calling service, employment or industrial occupation or avocation of workmen". "Undertaking" in the first part of the definition and "industrial occupation or avocation" in the second part obviously mean much more than what is ordinarily understood by trade or business. The definition was apparently intended to include within its scope what might not strictly be called a trade or business venture."

10. How far public utility service may come within the ambit of "industry" was deliberated in Banerji's case (supra) in the following words :

"A public utility service such as railways, telephones and the supply of power, light or water to the public may be carried on by private companies or business corporations. Even conservancy or sanitation may be so carried on though after the introduction of local self Government this work has in almost every country been assigned as a duty to local Bodies like our Municipalities or District Boards or Local Boards. A dispute in these services between employers and workman is an industrial dispute, and the proviso to Section 10 lays down that where such a dispute arises and a notice u/s 22 has been given the appropriate Government shall make a reference under the sub-section. If the public utility service is carried on by a Corporation like a Municipality which is the creature of a statute and which functions under the limitations imposed by the Statute does it cease to be an industry for this reason? The only ground on which one could say that what would amount to the carrying on of an industry if it is done by a private person ceases to be so if the same work is carried on by a local body like a Municipality is that in the latter there is nothing like the investment of any capital or the existence of a profit earning motive as there generally is in a business. But

neither the one nor the other seems a sine qua non or necessary element in the modern conception of industry.

11. After deliberating on the function of Municipality with relation to the definition of "industry" as laid down by the ratio of Banerji's case (supra) a reference was made to the landmark cases of *The Corporation of the City of Nagpur Vs. Its Employees*, and *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , for tracing the development in the application of decided ratio in Banerji's case (supra). The concept of internationally recognised vis a vis "industry" was also appended to by referring to various foreign decisions.

12. After carefully analysing various aspects it has been held in the case of *Bangalore Sewerage Board*, (supra), the principle underlying the concept for identifying the character of an enterprise as an industry was laid down as to whether element of wages and condition of services, output and economies and the community with peace, production and stream of supply, are present. Now if the services are obtained against wages even though organisation is charitable or welfare one, will then it would be an industry unless the workers participate as passion on human consideration but not because they are paid wages but because they share passion for the cause and derive satisfaction from their contribution. Whether the work resulted in any product and such products are utilised, may be for loss or gain, that is immaterial so far as the workman is concerned who sells his services in lieu of wages. Even Club or other branch of recreational associations when X-rayed from the industrial angle project a picture on the screen typical of employers hiring employees for wages for rendering services and/ or supplying goods on a systematic basis at specified hours are elementally workmen with the employers above and constitute not merely entertainment groups but industries under the Act. While catering to the needs of members of the Club the workmen do not get satisfaction but, they serve those who get satisfaction. The employer engages them for providing service to its members. It is the relation between the employer and workman which determines the identity and not object of the organisation itself unless that clement of any contribution to the object and organisation is present.

12A. Even the Co-operative Societies have been held to be "industry". It has been held in the case of *Bangalore Sewerage Board*, (supra) that absence of profit does not take out an institution out of the scope of industry. The Hospital run by the industry. When looked into relations between the employer and employee there exist nothing except service of the Workman hired for wages Whatever may be the ultimate gain of the employer. The relation between the workman and the employer is to be the determining factor.

13. While concluding Hon. Krishna Iyer J. in the *Bangalore Sewerage Board* (supra) has laid down the test as follows at P 403 :

"Our endeavour in this decision is to provide such working principles. This Court,

within a few years of the enactment of the salutary statute, explained the benign sweep of "industry" in Banerji (supra) which served as beacon in later years. The Ahmedabad Textile Industry's Research Association Vs. The State of Bombay and Others, acted on it, Hospital Mazdoor Sabha (supra) and Nagpur Corporation (supra) marked in its sheen. The law shed steady light on industrial inter relations and the country's Tribunals and Courts settled down to involve a progressive labour jurisprudence, burying the bad memories of laissez faire and bitter struggles in this field and nourishing new sprouts of legality fertilised by the seminal ratio in Banerji (supra). Indeed, every great judgment is not merely an adjudication of an existing list but an appeal addressed by the present to the emerging future. And here the future responded, harmonising with the human scope hopefully projected by Part IV of the Constitution. But the drama of a nation's life, especially when it confronts the hard forces, develops situations of imbroglio and tendencies to back track. And law quibbles where life wobbles. Judges only read signs and translate symbols in the national sky, so ensued an era of islands of exception dredged up by judicial process. Great clubs were privileged out, liberal professions swam to safety, educational institutions, vast and small, were helped out, diverse charities disinclined to be charitable to their own weaker workmen made pious pleas and philanthropic appeals to be extricated. A procession of decisions. The National Union of Commercial Employees and Another Vs. M.R. Meher, Industrial Tribunal, Bombay and Others, , Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club, , Cricket Club of India Vs. Bombay Labour Union and Another, Chartered Accountants (1963 1 LLJ 567) (SC) climaxed by The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi, carved out sanctuaries. The six members Bench--the largest which sat on this Court conceptually to reconstruct "industry" affirmed and reversed, held profit motive irrelevant but upheld charitable service as executive and in its lights and shadows, judicial thinning become ambivalent and industrial jurisprudence landed itself in a legal quagmire. Pinirapoles sought salvation and succeeded in principle (Bombay Panjrapole), Chambers of Commerce fought and failed, hospitals battled to victory. The Dhanrajgirji Hospital Vs. The Workmen, standards institute made a vain bid to extricate The Workmen of Indian Standards Institution Vs. The Management of Indian Standards Institution, research institutes, at the High Court level, waged and won non-industry status in Madras and Kerala. The murky legal sky paralysed Tribunals and Courts and administration and then came, in consequence, this reference to a larger Bench of seven Judges. Banerji (supra) amplified by Corporation of Nagpur, (supra) in effect met with its Waterloo in Safdarjung (supra). But in this latter case two voices could be heard and subsequent rulings zigzagged and conflicted precisely because of this built in ambivalence. It behoves us, therefore, hopefully to abolish blurred edges, illumine penumbral areas and over rule what we regard as wrong. Hesitancy, half tones and hunting with the hound and running with the hare can claim heavy penalty in the shape of industrial confusion, adjudicatory quandary and administrative perplexity at a time when the nation is striving to

promote employment through diverse strategies which need for their smooth fulfillment, less stress and distress, more mutual understanding and trust based on a dynamic rule of law which speaks clearly, firmly and humanely. If the salt of law loses its savour of progressive certainty where with shall it be salted? So we proceed to formulate the principles, deductible from our discussion, which are, decisive, positively and negatively, of the identity of "industry" under the Act. We speak not exhaustively but to the extent covered by the debate at the bar and, to that extent, authoritatively until over-ruled by a larger Bench or superseded by the legislative branch.

I - "industry" as defined in Section 2(j) and explained in Banerji, has a wide import.

(a) Where (i) systematic activity, (ii) organised by co-operation between 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 e.g. making, on a large scale, prasad or good 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 organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

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

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment so also, service calling and the like. This yields the inference that all organised activity possessing the triple elements in I (supra) although not trade or business, may still be industry (provided the nature of the activity viz., the employer-employee basis, bears, resemblance to what we find in trade or business). This takes into the fold of "industry" undertakings, calling and services adventure "analogous to the carrying on of a trade or business". All features other than the methodology of carrying on the activity viz. in organising the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. -- Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or other sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) professions, (ii) clubs (iii) educational institutions (iii) co-operatives (iv) research institutes (v) charitable projects and (vi) other kindred adventures, if they fulfill the triple test listed in, cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even Gurukulas and little research labs, may qualify for exemption if in simple ventures substantially and going by the dominant nature criterion substantively in single simple ventures, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non employee character of the unit.

(c) If in a pious or altruistic mission many employ themselves free or small honoraria or likely return mainly by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctor serving in their spare hours in a free medical centre or ashramites working at that bidding of the holiness, divinity or like central personality and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant, relationship then the institution is not an industry even if stray servants manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity, compassion, development passion or project.

IV --The dominant nature test:

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

(b) Notwithstanding the previous clauses, sovereign functions strictly understood, alone qualify for exemption, not the welfare activities or economic adventure 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 20).

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

We over-rule Safdarjung (supra) Solicitors" case (supra) Gymkhana (supra) Delhi University, Dhanarajgirji Hospital (supra)-and other rulings whose ratio runs counter to the principles enunciated above, and Hospital Mazdoor Sabha (supra) is hereby rehabilitated.

We conclude with, diffidence, because Parliament which has the commitment to the political nation to legislate promptly in vital areas like industry and trade and articulate the welfare expectations in the conscience portion of the Constitution, has hardly intervened to re-structure the rather clumsy, vapourous and tall-and-dwarf definition or tidy up the scheme although Judicial thesis and anti-thesis, disclosed in the two decades long decisions, should have produced a legislative synthesis becoming of a welfare State and Socialistic society, in a world setting where I.L.O. norms are advancing and India needs updating. We feel confident, in another sense since counsel stated at the bar that a bill on the subject is in the offing. The rule of law, we are sure, will run with the rule on Life -Indian Life at the threshold of the decade of new development in which Labour and: Management, guided by the State will constructively partner the better production and fair diffusion of national wealth. We have stated that save the Bangalore Water Supply and Sewerage Board appeal, we are not disposing of the others on the merits. We dismiss that appeal with costs and direct that all the others be posted before a Smaller Bench for disposal on the merits in accordance with the principles of Law herein laid down."

14. Relying on the above test in the present case in its department in road construction, Public Works Department carries on. (i) systematic activity, (ii) organised by co-operation between employer and employee with substantial element of commercial activity, (iii) for the production and/ or distribution of goods and services calculated to satisfy human wants and wishes which is neither spiritual nor religious. Since profit motive and gainful object is irrelevant and there being no distinction between the public, joint, private or other sector, Public Works Department in its Road construction department can neither be excluded nor be exempted from the definition of "industry" and the decisive test being the nature of the activity with the special emphasis on the employer-employee relations. In the present case there is no doubt about the nature of activity namely employer employee basis, bears resemblance to what we find in trade or business. The analogy is to be found out only on the employment terms. Admittedly, this Organisation is not included in religious or celestial activity nor the workmen have employed themselves in pious or altruistic mission, nor employ themselves free or for small honoraria or likely return mainly by sharing in the purpose or cause. The function carried on by the department is not sovereign functions strictly understood. It is based on its welfare activity undertaken by the Government which does not entitle the Organisation to exemption. The construction of road requires investment of capital and by co-operation of employer and employee, some products are evolved or produced and services are rendered by investment of capital as some other industry, it will be an "industry" admittedly if it is carried on by the private entrepreneurs. Such proposition is beyond doubt. When undertaken by the Government department it cannot be said that it would not be an industry in view of test laid down in Bangalore Water Supply Sewerage Board (supra) wherein it has also been held that even if a particular department contains some unit which are industry and

they are substantially severable then they can be considered to come within definition of Section 2(j) of the Act.

15. The definition of industry" as given in U.P. Industrial Disputes Act is as follows:

"Industry" means any business, trade, undertaking manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen."

The definition is very wide. In the case of Ghani Bahadur v. Labour Court, (supra) it was held that the Central Workshop Public Works Department engaged in repairing work of Government vehicle is "industry".

16. In the case of Des Raj v. State of Punjab (supra) the irrigation department of the Government Branch of Public Works Department of State of Punjab, was held to satisfy the test with the subject to dominant nature of test for the purposes of identifying the same as an "Industry".

17. Therefore the Tribunal was wholly wrong in holding that the Laboratory Assistant engaged in the work of testing of road construction and maintenance was not analogous to trade or business carried out in the laboratory. Inasmuch as the work of testing of road construction and maintenance is part of construction of the road and its maintenance which satisfy the three tests namely (i) systematic activity, (ii) organised by co-operation between employer and employee with substantial element of commercial activity and (iii) of the production and/or distribution of goods and services calculated to satisfy human wants and wishes which is neither spiritual nor religious. Applying the test laid down in Bangalore Sewerage Board (supra) I am, therefore unable to agree with the said finding of the Tribunal. The Road construction department of Public Works-Dept. is an "industry" as defined under U.P. Industrial Disputes Act, of which Laboratory is a part, inseverable of road construction department.

18. In that view of the matter the- Award cannot be sustained and, as such, is quashed. Let a writ of certiorari do issue accordingly.

19. Since the question with regard to merit was not decided by the Tribunal on the ground that the dispute was not industrial dispute, it is not desirable that the same should be decided here by this Court. The matter is, therefore, sent back to the Tribunal for taking a fresh decision on merit in respect of the dispute in the said adjudication case in accordance with law after affording reasonable opportunity to either of the parties to substantiate their respective cases. Accordingly a writ of mandamus do issue.

20. Since long time has lapsed in the meantime, it is desirable and this Court hopes and trusts that the Tribunal shall decide and dispose of the dispute within a period of six months from the date a certified copy of this order is produced before the Tribunal. Since both the parties are present before this Court, no further notice is needed to be issued. Both of whom should take appropriate

steps for the conduct of the said adjudication case with vigilance on behalf of each of the parties. Learned counsel for the parties have assured that the parties would not ask for unnecessary adjournment unless the same is exceptionally unavoidable.

21. In the result the writ petition succeeds and is thus allowed.

22. There will be, however, no order as to costs.