

(1959) 04 BOM CK 0026

In the Bombay High Court

Case No : Award, in Reference (I.T.) No. 303 of 1958

Shirur Municipality

APPELLANT

Vs

Its Workmen

RESPONDENT

Date of Decision : 30-04-1959

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 10(1), 2

Citation : (1959) 2 LLJ 417

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

Bench : Single Bench

Judgement

1. This industrial dispute has been referred to me under S. 10(1)(d) of the Industrial Disputes Act by the Labour and Social Welfare Department Order No. A.J.C. 24(2) of 1958 dated 31 July 1958. The demands of the workmen will be reproduced in due course.

2. To the statement of claim of the workmen the municipality filed its written statement on 1 November 1958. Then on 16 February, 1959 the municipality sought permission to file an additional written statement. The permission having been granted, an additional written statement was filed on the same day. There a preliminary objection has been raised by the municipality to the maintainability of the reference. This is how the objection is worded :-

"In view of the recent decisions, e.g., Corporation of the City of Nagpur v. N. J. Mujumdar, 1958 I L.L.J. 761 the employer-municipality takes a preliminary objection that the Industrial Disputes Act is not applicable in respect of the categories of workers mentioned in the application. The reference is therefore not valid and this Court has no jurisdiction to entertain the reference."

3. Sri Lalit, advocate for the municipality, and Sri J. V. Bhave for the workmen, advanced arguments on the preliminary point and requested me to give my ruling thereon.

4. The objection may be explained in this way. In the case of the Budge Budge

Municipality 1953 I L.L.J. 195 the Supreme Court held that

"the expression "industrial dispute" in that Act (i.e. the Industrial Disputes Act) includes all disputes between municipalities and their employees in branches of work that can be regarded as analogous to the carrying on of a trade or business."

These observations were interpreted by the Nagpur Bench of the Bombay High Court in the case of the Corporation of the city of Nagpur 1958 I L.L.J. 761 which held that every activity of the municipality should be separately examined in order to find out if it is analogous to the carrying on of trade or business and that activities which are purely governmental should be excluded from the operation of the Industrial Disputes Act. Sri Lalit, therefore, examined each of the ten groups of workmen in demand No. 2 and stated that with the exception of municipal fitter, assistant fitter and oilman no other category could fall within the operation of the Act. As this argument curtails the operation of the Act rather than widen it - as suggested by the Supreme Court, in the case of the Budge Budge Municipality - we must go back to that decision and follow up the progress of decisions on this point.

5. The phrase "analogous to the carrying out of a trade or business" appears in the decision of the Supreme Court in the case of D. N. Banerjee v. P. R. Mukherjee or which is also known as the Budge Budge Municipality case 1953 I L.L.J. 195. As this decision is the basis of all subsequent decisions on the subject, it will be necessary to profusely quote from it. In that case a head clerk and a sanitary after departmental enquiry. The industrial tribunal of West Bengal held that that was a case of victimization and ordered reinstatement. The Calcutta High Court in a writ petition upheld the decision. Leave was granted to appeal to the Supreme Court :

Page 196. - "The dismissal of the two employees was taken up by the municipal workers' union who challenged it as grossly improper. Thus it is clear that there was a dispute between the employer, viz., the municipality on the one side and the workmen represented by the union on the other. But what is urged by the municipality is that it was not an "industrial dispute" within the meaning of the Act and hence, there was no jurisdiction in Government to refer the dispute to a tribunal. It is contended on their behalf that the municipality in discharging its normal duties connected with local self-government is not engaged in any industry as defined in the Act. It is this question that we have to consider."

Their lordships then proceed to quote the definitions of "industry," "industrial dispute" and "workmen," compare them with definitions of "trade dispute" and "workmen" in S. 8 of the Industrial Courts Act, 1919 (9 and 10 George V) and observe :

Page 197. - "It has to be conceded, even at the outset, that an industry can be carried on by or under the authority of the Central or State Government, or by or on behalf of a local authority. This is made clear not only by the provision of Sub-

section (i) of Clause (a) of S. 2 but also by the definition of "employer" in Clause (g).

"Where a dispute arises in such an industry between the employees on the one side and the Central Government or the State or the local body on the other, it would be an industrial dispute undoubtedly. But where a dispute arises in connexion with the discharge of the normal activities of Government or of a local body, it is argued for the appellant that the dispute cannot be regarded as an industrial dispute. The soundness of this contention falls to be examined."

Then their lordship deal with what (?) the man in the street understands by the term "industry" and observe :

Page 198. - "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 disputes arising in connexion with them might be settled quickly ..."

Their lordship then proceed to consider whether the definitions of "industry," "industrial dispute" and "workmen" take in the extended significance or exclude it and they came to the conclusion that the definition of "industry" was apparently intended to include within its scope might not strictly be called a trade or business venture.

6. Turning to the definition of the expression "public utility service," their lordships say :

Page 199. - "A public utility service such as railways, telephones and supply of power, light or water to the public may carried on by private companies or business corporations. Even conservancy or sanitation may be so carried on, though after the introduction of the 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 workmen is an industrial dispute. If a 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 done 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 is a sine qua non or necessary element in the modern conception of industry."

7. Their lordships quote from some foreign authorities and arrive at the following conclusion :

Page 202. - "Having regard to the definitions found in our Act, the aim or objective that the legislature had in view and the nature, variety and the range

of disputes that occur between employers and employees, we are forced to the conclusion that the definitions in our Act include also disputes that might arise between municipalities and their employees in branches of work that can be said to be analogous to the carrying out of a trade or business."

8. The decision has been referred in several subsequent decisions. It came to be referred by the Supreme Court itself in the case of Baroda Borough Municipality Vs. Its Workmen, where their lordships observed :

Page 11. - "It is now finally settled by the decision of this Court in D.N. Banerji Vs. P.R. Mukherjee and Others, that a municipal undertaking of the nature we have under consideration here (namely, the supply of electricity) is an industry within the meaning of the definition of that word in S. 2(j) of the Industrial Disputes Act, 1947, and that the expression "industrial dispute" in that Act includes disputes between municipalities and their employees in branches of work that can be regarded as analogous to the carrying on of a trade or business."

But in that case the question for consideration before their lordships was mainly whether the workmen of one department of the municipality could claim bonus because that particular department had made profit. Their lordship negative such a claim on the ground that the various departments of a municipality could not be separated like that.

9. Then we find reference to the Budge Budge Municipality case in Hospital Mazdoor Sabha v. State of Bombay 1957 I L.L.J. 55. In that case two ward servants had been discharged by the hospital authorities because Government wanted to make provision for certain workmen who had been retrenched from the Civil Supplies Department. The Bombay High Court held that the two ward servant were entitled to retrenchment compensation. The next question which their lordships discussed was : "Was the hospital in which the petitioners were engaged an industry to which the Act applied ?" Their lordships observed :

Page 58. - "The Industrial Disputes Act embodies certain principles which ought to regulate relations between employer and employee. These principles are accepted by the legislature as the proper principles in a progressive State and, therefore, the duty of the Court must be to give to the expression "industry" as wide a definition as it is possible. If the Act embodies correct principles regulating the relations of employer and employee, then there is no reason why as many workmen as possible should not obtain the benefit of the rights and safeguards given to workmen under the Act."

Then their lordships deal with the various definitions in the Act and state that an "undertaking" or "calling" could be engaged in from the motives of philanthropy.

10. Then we find the following observations :-

Page 58. - "It was sought to be argued by the Advocate-General that the maintenance of public health and giving of medical relief was part of the duty of Government and if it was part of the duty of Government then it could not

constitute an industry."

To this argument their lordships gave the following reply :-

Page 59. - "If one were to judge any activity of Government by the principle of duty, then practically every activity of Government would satisfy the test and would keep that activity out of the purview of the Act. In our opinion that is not the correct approach. The correct approach must be to decide what activities are essential to the authority of Government as such, what are the functions which only Government can discharge and which it would not be competent for any private individual to discharge ... Therefore, in our opinion, the test we should lay down in order to determine whether a particular activity undertaken by Government is an "industry" would be to consider whether if that activity had been undertaken by a private agency, would it have been an industry to which the Act applied. If the Act applied to that activity, then, in our opinion, it is entirely immaterial whether that activity is undertaken by Government."

Then their lordships referred to the decision of the Supreme Court in Budge Budge Municipality case and observed :

Page 61. - "Therefore, when the learned Judge is talking of an activity analogous to the carrying on of a trade or business, with respect, what he is referring to is the wider meaning of the expression "industry" which includes not only business but also an undertaking."

Their lordships conclude by saying :

Page 61. - "So that the immunity is only given to Government when it is administering true essential governmental authority."

It would follow from this conclusion that when Government delegates its true essential governmental authority to a local body to administer, that particular department of the local body also would enjoy the same immunity.

11. Then we come to a recent decision of the Nagpur Bench of the Bombay of the High Court in the case of the Corporation of the City of Nagpur 1958 I L.L.J. 761. The State Industrial Court of Nagpur had held that all the activities of the Corporation were covered by the Industrial Disputes Act and had proceeded to prescribe scales of pay for the workmen in all departments. In appeal, their lordships observed :

Page 764, - "What is therefore to be determined in this case is which of the activities held by the Corporation fall within the definition of "industry" as contained in the Act."

Page 765. - "It was therefore incumbent on the State Industrial Court to examine each of these activities and ascertain which, if any of these, would fall within the definition of "industry" contained in the Act."

Then their lordships referred to the decision in Budge Budge Municipality case,

Baroda Borough Municipality case and Hospital Mazdoor Sabha case and observed :

"The State Industrial Court has not stated whether all the activities of the Corporation of the City of Nagpur answer the test set out by the learned Chief Justice (in Hospital Mazdoor Sabha case) ... It is clear from the aforesaid decision that some of the activities of the Corporation as far (sic) instance, levying or collecting of taxes, assessing house property, or carrying on any another (sic) governmental functions are not activities of a kind which it is permissible for a private individual to engage in."

Page 768. - "We may add that assessment and levying of taxes are Government functions delegated to the Corporation and cannot prima facie be regarded as industrial undertakings."

12. The case was remanded to the State Industrial Court and the decision of that Court after remand is published in Bombay Government Gazette, Part I-L, dated 6 February, 1958, at p. 829. The learned Judge examined every activity of the the Corporation and came to the conclusion that the following activities of the Corporation did not fall within the definition of the term "industry" :-

Page 852. - "(1) Assessment and levy of house-tax.

(2) Assessment and levy of octroi.

(3) Removal of encroachment and pulling down of dilapidated houses.

(4) Prevention and control of food adulteration.

(5) Maintenance of cattle-pounds,"

He also observed :

Pages 852-853. - Persons who are exclusively employed for any of the above activities would not be persons employed in an industry and cannot have the benefit of this award. Persons employed in these activities, who are also entrusted with other important work involving activities which are held to be industry, would have the benefit of this award provided they also fall within the definition of employees."

13. As directly by the Nagpur Bench of the Bombay High Court we must examine each activity which is involved in this reference. Actually, their lordships restrict their directions to activities and not individual Posts. The municipal secretary is an employees in the administrative department of the municipality. He is actually the first executive officer of the municipality and carries on the direction of the president. His duties are enumerated in rules 85 and 86 of the rules and by laws of the Shirur municipality (Ex. M. 7.). They show that many of his duties are clerical as well as supervisory. There may be many workmen working in his office but we are only concerned with three clerks (excluding the naka clerks). One clerk is said to be a collection clerk, one is an accounts clerk and one is a general

clerk who also helps the first clerk in collecting taxes. We must therefore consider the activities of the administrative department. This department actually owes its very existence to the existence of other departments. It controls the other departments. Orders to the various departments are issued through the administrative departments. Amounts collected and amounts spent for the various activities of the municipality are credited and debited under different heads in this office. It is this department which prepares its annual reports and carries out the instructions of the Local Self-Government Department. It is like the head officer of a concern having different branches. Their lordships of the Bombay High Court laid down the test in the case of the Hospital Mazdoor Sabha when they said :-

"The test we should lay down in order to determine whether a particular activity undertaken by Government is an "industry" would be to consider whether if that activity had been undertaken by a private agency, would it have been in industry to which the Act applied."

So we must look to the other activities of the municipality which are controlled by the administrative department to find out if those activities are purely governmental functions or whether they could be undertaken by a private agency.

14. The municipal fitter is admitted to fall within the operation of the Act. So is assistant fitter and oilman but not the lamp-lighter. Sri Lalit said that lamp-lighting was not an industry. That is not, in my opinion, the correct way to look at the problem. What we must find out is, could it be said that no private agency could undertake this duty. There could be nothing to prevent a private agency from undertaking this job. As their lordship said in the Hospital Mazdoor Sabha case everything would be one of the duties of Government. But the correct approach would be to decide what activities are essential to the authority of Government as such. In my opinion, street lighting is an activity which any private agency could undertake.

15. I shall keep aside the category of municipal checker who checks octroi collections. I shall deal with that category along with naka clerks.

16. The categories of sanitary mukadam, road mazdoor, rat destroyer, sweepers and scavengers are from either the sanitary department or from the conservancy department. I asked Sri Lalit what was the duty of the road Mazdoor and he was instructed to explain that that workman removed dirt and filth from the roads. We need not enter into any elaborate discussion of the duties of these two departments. Their lordship of the Supreme Court have categorically stated in the case of the Budge Budge Municipality that -

"a dispute in these service between employers and workmen is an industrial dispute."

Sri Lalit tried to suggest that their lordships were considering these activities carried in foreign countries when they made these observations and that these

observations did not apply to India. I do not agree with Sri Lalit, The whole passage from their lordships' decision is reproduced in Para. 6 above and it is absolutely clear that their lordships did intend to observe that although our municipalities and district boards and local boards carry on the activities of sanitation and conservancy, they could be carried on by private companies or business corporation and so fall within the purview of the Industrial Disputes Act.

17. The maid servant and the nurse are employees in the municipal maternity dispensary. Now this activity of the municipality is very exhaustively discussed by the Bombay High Court in the case of the Hospital Mazdoor Sabha where it is held that the activity cannot be called a purely governmental function and that it could be carried on by private agency. So these categories also fall within the purview of the Industrial Disputes Act.

18. Now we take up the octroi department consisting of naka clerks and checker. In the case of Corporation of the City of Nagpur their lordships stated that

"assessment and levying of taxes are Government functions delegated to the Corporation and cannot prima facie be regarded as industrial undertakings."

19. Section 3(14) of the Bombay District Municipal Act, 1901, states that "'tax' shall include any toll, rate, cess, fee or other impost leviable under this Act." Section 59 deals with what taxes can be imposed by a municipality and uses different terminology at different places. It begins by stating that the municipality can impose "any of the following taxes." Then it describes the taxes as follows :-

- (1) Rates on buildings or lands or both.
- (2) Tax on all or any vehicles, boats or animals.
- (3) Toll on vehicles and animals entering the district.
- (4) An octroi on animals or goods or both brought within the octroi limits for consumption or sale.
- (5) Tax on dogs.
- (6) Special sanitary cess.
- (7) General sanitary cess.
- (8) General water tax.
- (9) Lighting tax.
- (10) Pilgrim tax.

None of these terms is defined in the Bombay District Municipal Act nor is any distinction between a toll and a rate, a cess and fee, a tax and octroi, apparent from the different sections of the Act. Section 3(14) merely says that all these imposts are included in the term "tax."

20. The term "tax," "fee" and other allied terms were the subject of discussion in three cases that came up before the Supreme Court. All the three were on the question of religious endowments, but the discussion on certain points is germane to the issue in the present case. I shall quote only from the first of the three cases because in the subsequent two cases, the findings arrived at in the first case were followed. The case I would respectfully refer to is *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, . This case was decided by seven learned Judges of the Supreme Court :

Page 295. - "The question for our consideration is, what are the indicia or special characteristics that distinguish a fee from a tax proper ?"

"A neat definition of what "tax" means has been given by Latham, C.J., of the High Court of Australia in *Mathews v. Chicori Marketing Board* 60 C.L.R. 263 :

"A tax," according to the learned Chief Judge "is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for service rendered."

"The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purpose of general revenue, which, when collected, forms part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon a particular individual, there is, as it is said, no element of quid pro quo between the taxpayer and the public authority."

"Coming now to fees, a "fee" is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily the fees are uniform and no account is taken of the varying abilities of different recipients to pay."

"We think that a careful examination will reveal that the element of compulsion or coerciveness is present in all kinds of imposition, though in different degrees and that it is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fee."

"Compulsion lies in the fact that payment is enforceable by law against a man in spite of his unwillingness or want of consent; and this element is present in taxes as well as in fees,"

"The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is payment for a special benefit or privilege."

Page 296. - "As Seligman says, it is the special benefit accruing to the individual

which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action."

"If, as we hold, a fee is regarded as a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fees should, on the face of the legislative provision, be correlated to the expenses by Government in rendering the services. As indicated in Art. 110 of the Constitution, ordinarily there are two classes of cases where Government imposes "fees" upon persons. In the first class of cases, Government simply grants a permission or privilege to a person to do something, which otherwise that person would not be competent to do and extracts fees either heavy or moderate from that person in return for the privileges that is conferred ... In such cases, according to all writers on public finance, the tax element is predominant and if the money paid ... goes ... for matters of general public utility, the licence fee cannot but be regarded as a tax."

"In the other class of cases, the Government does some positive work for the benefit of persons and the money is taken as the return for work done or services rendered. If the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged in the public revenues for the benefit of the general public, it could be counted as fees and, and not a tax. There is really no generic difference between the tax and fees and, as said by Seligman, the taxing power of a State may manifest itself in three different forms known respectively as special assessments, fees and taxes."

The same view was expressed by five learned Judges of the Supreme Court in *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, and *Mahant Sri Jagannath Ramanuj Das and Another Vs. The State of Orissa and Another*, .

21. The reason why I have so exhaustively quoted from the first case is that the decision sets at rest the controversy that whereas levying of a tax is a true essential governmental function, the levying of a toll or a fee is not. Their lordships have categorically stated that the element of compulsion or coerciveness is present in both levies and that unless the amount collected is set apart for the express purpose of being appropriated for specific service rendered, the two levies are nothing but imposition of taxes. In the case before us, it is no one's case that the octroi or toll that is collected is kept apart for any particular service rendered to person paying the octroi or toll. The amount goes to the general revenues of the municipality for the welfare of the inhabitants of the municipal district. Therefore, we cannot make any distinction between an octroi and a toll. The levying of toll is as much a governmental function as the levying of octroi. No private agency can do that work. It was argued that the right to collect toll can be farmed out under S. 81A. That is quite true : that only means that the municipality delegates its authority to a licensee to do its work on payment of a certain fee by the licensee. The licensee cannot impose his own fee. The fee has got to be prescribed by the local authority. Part of the collections is retained by the licensee towards his remuneration. This farming out does not take the levying of toll out of the functions which only Government or its

delegate can perform. So under the test prescribed in the case of Hospital Mazdoor Sabha and reiterated in the case of Corporation of the City of Nagpur, I hold that workmen who exclusively do the work of collecting octroi or toll or both or collecting any other fee at the octroi posts and the checker who checks the collections are not workmen as that word is defined in the Industrial Disputes Act and that those categories of municipal employees cannot raise an industrial dispute.

22. But Sri Bhavé for the workmen urged that the union had raised a dispute on behalf of the workmen in the octroi department and that therefore this tribunal could go into the conditions of service of these categories also. This argument is apparently based on the definition of the expression "industrial dispute." That definition reads as follows :-

Section 2(k). - "Industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, which is connected with the employment of non-employment or terms of employment or with the conditions of labour of any person."

23. We find a very critical and exhaustive discussion on the scope of the expression "any person" in the decision of the Bombay High Court in the case of Ford Motors 1953 I L.L.J. 6. The learned Chief Justice observed as follows :-

Page 7. - "... The main question which arises on this petition is whether the labour tribunal has jurisdiction to adjudicate with regard to the scales of pay and the right of bonus of employees of the respondent 2 company who are not workmen of the company within the meaning of the Industrial Disputes Act. In other words, the question for our consideration is whether it is competent to the workmen of the respondent 2 company to raise a dispute with regard to payment of wages and bonus, not to themselves, but to other employees of the company, and having raised such a dispute whether it is competent to the labour tribunals to adjudicate upon such a dispute."

Then his lordship observed that if by "any person" was meant any employee in any industry and in any part of the country or even outside the country, the result would be "most extraordinary and startling."

"Therefore, it is clear that some restriction or some limitation has to be placed upon the expression "any person"."

Page 9. - "A workman may have ideological differences with his employer; a workman may feel sympathetic consideration for any employee in his own industry or in other industry; a workman may feel seriously agitated about the conditions of labour outside our own country; but it is absurd to suggest that any of these factors would entitle a workman to raise an industrial dispute within the meaning of S. 2(k). The dispute contemplated by S. 2(k) is a controversy in which the workman is directly and substantially interested. It must also be a grievance felt by the workman which the employer is in a position to remedy.

Both the conditions must be present ..."

"Further another curious result of Mr. Desai's argument would be that although the non-workmen or person not falling in the category of workman as defined by the Act could not themselves raise any dispute and make it an industrial dispute and have it adjudicated upon, they could yet have their rights determined vicariously through the agency of some other parties. That again is an interpretation which seems to be totally inconsistent with the scheme of the Act, because the award that is given by the tribunal and which is made binding is an award which can only be made binding upon the parties to that award, and it is difficult to hold that although persons who are not workmen cannot be parties to a dispute, yet the employers can be bound as against them by the tribunal adjudicating upon their rights. Therefore, when S. 2(k), speaks

Page 10. - "of the employment or non-employment or the terms of employment or the conditions of labour of any person, it can only mean the employment or non-employment or the terms of employment or the conditions of labour of only those persons in the employment or non-employment or the terms of employment or with the conditions of labour of whom the workmen themselves are directly and substantially interested ... It is only primarily in their own employment, in their own terms of employment, in their own terms of employment, in their own conditions of labour that workmen are interested and it is with regard to these that they are entitled to agitate by means of raising an industrial dispute and getting it referred to a tribunal by Government under S. 10."

24. An identical question came up for discussion before the Supreme Court in the case of Workmen of Dimakuchi Tea Estate Vs. The Management of Dimakuchi Tea Estate, where by a majority decision the Court referred with approval to the decision of the Bombay High Court in Ford Motors 1953 I L.L.J. 6 case. Their lordships also made a reference to the Full Bench decision of the Labour Appellate Tribunal in the case of United Commercial Bank, Ltd. v. Sri Kedar Nath Gupta 1952 I L.L.J. 782. It would appear that some time before the Full Bench decision of the Labour Appellate Tribunal, Sarvasri K. C. Sen, J. N. Majumdar and N. Chandrasekara Ayyar formed the All India Industrial Tribunal (Bank Disputes). Sarvasri K. C. Sen and J. N. Majumdar delivered the majority decision of the tribunal and held that a dispute between employers and workmen might relate to the employment, non-employment, terms of employment or conditions of labour of persons who are not workmen and the words "any person" used in the definition clause were elastic to include an officer, that is, a member of the supervisory staff. Sri J. N. Majumdar happened to be the Chairman of the Full Bench of the Labour Appellate Tribunal which decided the case of the United Commercial Bank, Ltd. The Chairman himself delivered the unanimous decision of the Full Bench where the earlier view taken in the Banks dispute was pronounced to be incorrect. The Chairman observed :

"I am, therefore, of opinion that the expression "any person" has to be

interpreted in terms of "workman." The words "any person" cannot have, in my opinion, their widest amplitude, as that would create incongruity and repugnancy in the provisions of the Act. They are to be interpreted in a manner that persons, who would come within that expression, can at some stage or other answer the description of workman as defined in the Act."

The Supreme Court summarized its decision in the following words :-

Page 513. - "To summarize : Having regard to the scheme and objects of the Act and its other provisions, the expression "any person" in S. 2(k) of the Act must be read subject to such limitations and qualifications as arise from the context. The two crucial limitations are :

(1) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other; and

(2) the person regarding whom the dispute is raised must be one in whose employment, non-employment or terms of employment or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest."

25. In the case before the Supreme Court the workmen's union had raised a dispute regarding the non-employment of a medical officer who was in the employ of the company. The doctor was a member of the union but their lordships held that the workmen could not be directly or substantially interested in one of the officers of the company simply because that officer happened to be a member of the union. As observed by the Full Bench of the Labour Appellate Tribunal, the workmen could be supposed to be directly and substantially interested in persons "who would come within the expression" and who could "at some stage or another answer the description of workmen as defined in the Act." In the instant case the octroi nakedars are not different from other clerks. They collect the octroi or toll or fee according to a schedule, pass receipts, fill in registers, credit the amount in the municipal office, seize the goods of a person who tries to avoid payment of duty and sell the goods by following certain provisions. They do clerical works as any other clerk does and they would be workmen but for the fact that they are engaged on work which only Government or its delegate can do. There is thus only a technical bar to their falling under the provisions of the Industrial Disputes Act. Their colleague clerks in other departments have a direct and substantial interest in them. Therefore, I have come to the conclusion that the workman of the municipality can raise an industrial dispute in regard to the employment or non-employment or terms of employment or terms of employment or conditions of labour of octroi department employees.

26. Having dealt with all the categories involved in this reference, we go back to the administrative department. As I said earlier, that department controls the

other department. And since a dispute as regards the other departments is an industrial dispute, the secretary and the three clerks in the administrative department cannot remain outside the purview of the Act.

27. The result of the above discussion is that all the categories enumerated in demand No. 2 can be dealt with by this tribunal in this reference. I direct that the matter may be set down for hearing on merits. 28. This award - part I may be submitted to Government.