
(2011) 09 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 918 of 2003

State of Rajasthan and Another

APPELLANT

Vs

Labour Court, Ajmer and Another

RESPONDENT

Date of Decision : 29-09-2011

Acts Referred:

Industrial Disputes Act, 1947 — Section 2(1), 2(a), 2(i), 2(j), 2(oo)

Citation : (2013) 1 CDR 169

Hon'ble Judges : Narendra Kumar Jain, J;Arun Mishra, J

Bench : Division Bench

Advocate : Lokendra Singh Shekhawat, for Mr. I.R. Saini, AAG, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Mishra, J.—The order dt. 1.5.2003 passed by Single Bench in CWP No. 2174/2003 dismissing the writ application has been questioned by way of filing the intra-court appeal. The only question raised by learned counsel appearing on behalf of the appellant-State is that the police department could not be said to be an industry. Thus, the provisions of Sec. 2(oo) of the Industrial Disputes Act, 1947 were not attracted, as such, it could not be said to be the case of retrenchment under Sec. 25-F of the Industrial Dispute Act.

2. After hearing learned counsel for the appellant, it is apparent that the workman was appointed on the post of "Bhishti" (Waterman) on daily wages basis. The labour Court relying upon the decision of Apex Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, and considering the nature of work, which was rendered by the workman has observed that it could not be said that he was engaged for sovereign function of State. The trial court has rightly opined that provisions of Industrial Disputes Act were applicable. This aspect has also been considered by Madhya Pradesh High Court in Centre of Indian Trade Union and Another Vs. State of Madhya Pradesh and Others, in which, various decisions of the issue have been considered by one of

us thus:

14. The foremost question for consideration is whether the Public Works Department and other departments of State of M.P. can be treated to be within the ken of "industry" as defined in Sec. 2(j) of Industrial Disputes Act.

15. To understand concept of "industry" the decision in the case of Bangalore Water Supply (supra) is the last word and is a landmark decision which holds the field. Two Judges Bench of Hon"ble Supreme Court took a different view in Sub-Divisional Inspector of Posts, Sub-Divisional Inspector of Post, Vaikam, and others Vs. Theyyam Joseph, etc.,, and in Bombay Telephone Canteen Employees Association Prabhadevi Bombay Telephone Canteen Employees" Association, Prabhadevi Telephone Exchange Vs. Union of India and another, The Supreme Court in General Manager, General Manager, Telecom Vs. A. Srinivasa Rao and Others, held that Telecommunication Department of Govt. of India is an "industry". Their Lordships further held that a Bench of lesser strength of the Supreme Court cannot take a contrary view to the decision in Bangalore Water Supply case (supra) recorded by the Bench comprising of seven Judges long back in 1978 and the decisions in Theyyam Joseph (supra) and Bombay Telephone Canteen Employees (supra) taking a contrary view that Government department cannot be treated to be an "industry" were overruled.

16. In Coir Board, Emakulam, Coir Board, Ernakulam, Cochin and Another Vs. Indira Devi P.S. and Others, two Judges Bench of the Hon"ble Supreme Court again doubted the correctness of the Bangalore Water Supply case (supra) and referred the matter to the Hon"ble Chief Justice for referring the point to a larger Bench of nine Judges. The Supreme Court in Coir Board Ernakulam Kerala State and Another Vs. Indira Devi P.S. and Others, declined to refer the matter to a larger Bench. The Hon"ble Chief Justice and two other Judges held that: Bangalore Water Supply case (supra) does not in our opinion require reconsideration.

18. The definition of "industry" excludes any activity of the Government relatable to the sovereign functions of the Government. "Industry" means systematic activity carried on by co-operation between an employer and the employee for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes. It is immaterial any capital has been invested; profit motive is also immaterial. The Supreme Court in Bangalore Water Supply case (supra), held as under--

161. Industry as defined in Sec. 2(j) and explained in D.N. Banerji Vs. P.R. Mukherjee and Others, has a wide import:

(a) Where (i) systematic activity, (ii) organized 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 i.e., making, on a large scale prasad or

food) 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 organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

(II) Although Sec. 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 organized activity possessing the triple elements in 1 (supra), although not trade or business, may still be "industry" provided the nature of activity viz, the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold "industry" undertakings, callings and services, adventures "analogous to the carrying on of trade of business". All features, other than the methodology of carrying on the activity viz, in organizing the cooperation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is anomaly .

(III) Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer 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, (iv) co-operatives, (v) research institutes, (vi) charitable projects, and (vii) other kindred adventures if they fulfil the triple test listed in 1 (supra), cannot be exempted from the scope of Sec. 2(i).

(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, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose of clause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre of ashramites working at the 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, developmental passion or project.

(IV) The dominant nature test--

(a) Where a complex of activities, some of the which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" as in the *University of Delhi and Another Vs. Ram Nath*, or some departments are not productive of goods and services if isolated even then, the pre-dominant nature of the services and the integrated nature of the departments as explained in the *The Corporation of the City of Nagpur Vs. Its Employees*, will be the true test. The whole undertaking will be "industry" although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, 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 Sec. 2(1).

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

(V) We overrule *Safdarjung The Management of Safdarjung Hospital, New Delhi Vs. Kuldeep Singh Sethi*, *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*, *University of Delhi and Another Vs. Ram Nath*, *The Dhanrajgirji Hospital Vs. The Workmen*, and other rulings whose ratio runs counter to the principles enunciated above, and *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, is hereby rehabilitated.

23. In *Chief Conservator of Forests and another, Vs. Jagannath Maruti Kondhare*, etc. etc., the question considered by the Supreme Court was whether the functions of a forest department of State for creation of a park under bio-aesthetic development for the benefit of the urban population could be called sovereign function. The Supreme Court held that functions whenever are inalienable can be called sovereign function. It intended to fulfil bio-aesthetic, recreational and educational aspirations of the people which will indirectly benefit producing enlightened generation of conservationists of the nation inclusive of forests and wild life for the future. The Supreme Court held that the same cannot be regarded as a part of inalienable or inescapable function of the State as such

work could well be undertaken by an agency which is not required to be even an instrumentality of the State. These functions fall within the ambit of "industry" under Sec. 2(j) of the Industrial Disputes Act. In *Gurmail Singh and Others Vs. State of Punjab and Others*, it was held that running tubewell constitutes "industry" whether it is by Government or Corporation. There is no incompatibility in applying some of the provisions of the industrial Disputes Act to the persons in the service of Government, in *Management of Management of Dandakaranya Project, Koreput Vs. Workmen through Rehabilitation Employees Union and other*, the project undertaken by the Govt. of India to rehabilitate refugees from Pakistan was held to be an "industry".

24. Octroi department of Municipal Corporation was held to be an "Industry" by the Supreme Court in (1988) 1 SCWR 66, *Council of Industrial Research and Systematic Activity* was also held to be an "industry" in *Manganese Ore (India) Ltd. Vs. Chandi Lal Saha and others*, as it fulfil the triple test laid down in *Bangalore Water Supply case (supra)*. In *Gopal Vs. Administrative Officer, Madhya Pradesh Khadi and Village Industries Board and Others*, the Supreme Court held that Khadi & Village Industries Board was an "industry" General Administration Department of the Municipal Board was also held to be an "industry" by the Supreme Court in *Samishta Dube Vs. City Board, Etawah and Another*,

25. The decision of Full Bench of the Punjab & Haryana High Court, *State of Punjab Vs. Kuldip Singh and Another*, , relied on by the learned arbitrator was overruled by the Supreme Court in *Des Raj and Ors Vs. State of Punjab and Ors*, Irrigation department was held is to be an "Industry"; the Supreme Court held that--

In *Dinesh Sharma and Others Vs. State of Bihar and Others*, , a Division Bench of the Patna High Court was considering if the Public Health Engineering Department of the State of Bihar was an industry. In Paragraph 8 of the judgment reliance was placed on the *Bangalore Water Supply Case (supra)* and the *Nagpur Corporation case (supra)* and it was held that the said department of the State Government of Bihar was an industry. In *Chief Engineer, Irrigation, Orissa vs. Harihar Patra*, 1977 Lab IC 1033, a Division Bench of the Orissa High Court was considering whether the Salandi Irrigation Project in the State was an industry. The High Court relied upon the earlier Full Bench decisions of this Court which we have referred to above, and came to hold that the irrigation project was an industry.

The Administrative report of the facts found by the High Court in the instant case have attempted to draw out certain special features. The, legal position has been indicated in the earlier part of our judgment. On, the tests, as already laid down in the judgments, we do not think these facts found in this case can take out the irrigation Department outside the purview of the definition of "industry". We have already referred to the Dominant Nature test evolved by Krishna Iyer, J. The main functions of the Irrigation Department when subjected to the Dominant

Nature test clearly come within the ambit of industry. We have not been able to gather as to why even six years after the amendment has been brought to the definition of industry in Sec. 2(j) of the Act the same has not been brought into force. This Court on more than one occasion has indicated that the position should be clarified by an appropriate amendment and when keeping in view the opinion of this Court, the law was sought to be amended, it is appropriate that the same should be brought into force as such or with such further alterations as may be considered necessary, and the legislative view of the matter is made" known and the confusion in the field is cleared up.

26. The main function as per Deshraj (supra) of the irrigation department when subjected to dominant test clearly come within the ambit of "industry".

27. A Full Bench of Rajasthan High Court in 1994 Labour & Industrial, Cases 345, held that department of Panchayat Samiti engaged in the work of construction of roads, buildings and tanks and employing staff in this regard is an industry. Public Health Wing of the Public Health Engineering Department under the State Government was held to be an "industry" by the Kerala, Bombay and Rajasthan High Court respectively in 1979 Lab IC 255 (Ker), 1991 Lab IC 1385 (1392) (Born) and 1983 Rajasthan Law Reporter 938. A Division Bench of this Court also in General Manager, Bank Note Press Vs. Chattar Singh and Others, hold that nature of activity is the determining factor. Only because State conducts an activity, it cannot become a sovereign function.

28. To come to the conclusion that PWD and other departments of the State are not "industry" the main plank of the arbitration award is Full Bench decision of Punjab & Haryana High Court in State of Punjab vs. Kuldeep Singh (supra) which was specifically overruled by the decision of the Supreme Court in Deshraj vs. State of Punjab (supra).

32. In subsequent decision In Municipal Corporation of Delhi Vs. Female Workers (Muster Roll) and Another, the Municipal Corporation undertaking construction work of laying and repairing roads, etc. is held to be an "industry" which is akin to function of Public Works Department of State Government. In Agriculture Produce Market Committee vs. Ashok Harikuni & Anr. (supra), the Supreme Court held Agriculture Produce Market Committee carries activity within the definition of "industry". The Supreme Court further held that sovereign functions are primarily inalienable function which the State could exercise. Welfare activity of the State cannot be said to be sovereign function. Absence of profit motive or fact that there is State monopoly does not make such enterprise sovereign. The Supreme Court further held that--

It is true various functionaries under this Act are creature of statute. But creation as such, by itself, cannot confer it the status of performing inalienable functions of the State. The main controlling functions and power is conferred on the market committee whose constitution itself reveals, except one or two rests are all are elected members representing some or other class from the public. In

fact, all Governmental functions cannot be construed either primary or inalienable sovereign function. Hence even if some of the functionaries under the State Act could be said to be performing sovereign functions of the State Government that by itself would not make the dominant object to be sovereign in nature or take the aforesaid Act out of purview of the Central Act.

Section 2(a) at the Central Act defines "Appropriate Government" in relation to any industrial disputes concerning any industry carried on by or under the authority of Central Government, or railway company etc. and refers to large number of corporations and corporate bodies which falls in the category of Industry. This indicates even Legislature's intends a very large arms of "industry", to include large number of enterprises to be industry to confer benefit to the employees working under it. In fact several corporations conferred with statutory powers also curtails individual rights like, through levy of demurrages, detention charges in the warehousing corporation under the Warehouse Corporation Act: Regulation of entry into airport, ATC, levy and regulation of taxes and fees by the international airport authority. Assessment and levy of damages as well as penalties by authorities under the Employees State Insurance Act and Employees Provident Fund Act. Though, each of the aforesaid corporations and statutory bodies are "industry". So one of the feeble submission that curtailment of right of an individual could only be by the exercise of sovereign power has also no merit.

The Supreme Court, thus, held aforementioned various corporations to be "industry" in view of the nature of duties and also the nature of sovereign functions.

33. In *Corporation of the City of Nagpur vs. Its Employees* (supra), the following departments of the Corporation were declared to be "industry" --

- (i) Tax Department,
- (ii) Public Conveyance Department,
- (iii) Fire Brigade Department,
- (iv) Lighting Department,
- (v) Water Works Department,
- (vi) Enforcement (Encroachment Department),
- (vii) Sewage Department,
- (viii) Health Department,
- (ix) Market Department,
- (x) Public Gardens' Department,
- (xi) Public Works Department,

- (xii) Assessment Department,
- (xiii) Estate Department,
- (xiv) Education Department,
- (xv) Printing Press Department,
- (xvi) Building Department, and
- (xvii) General Administration Department.

Considering the aforesaid test in City of Nagpur (supra) and the nature of large number of similar departments, which have been held to be an "industry" by the Supreme Court in various decisions, the decision of the learned arbitrator, thus, cannot be said to be in accordance with law. It was probably not pointed out that decision of Full Bench of Punjab & Haryana High Court in Kuldeep Singh's case (supra) way back in the year 1988. Thus, error has crept in the award so passed. The decision of Madras High Court in State of Tamil Nadu vs. Principal Labour Court (supra) relied on by arbitrator suffers with the same fallacy of following an overruled decision of Kuldeep Singh (supra). It also does not appear that the arbitrator considered what are the sovereign functions and what are the functions of the various departments and whether they were inalienable. The main discussion made by learned arbitrator was about the public works department only and function of which has to be held to be within the meaning of "industry" as defined under Sec. 2(j) of the Industrial Disputes Act, 1947. The function is not alienable and the function which is performed by various wings of public works department cannot be said to be sovereign. The activities of PWD; constructions of the houses, roads and various other similar functions can be carried out by independent agency. Thus, learned arbitrator erred in law in coming to the conclusion that Government departments like PWD and other departments are not "industry" within the purview of definition of "industry" under Sec. 2(j) of Industrial Disputes act. Only sovereign functions are excluded from "industry" not each and every function carried out by the various departments of State. Thus, the award passed by the arbitrator cannot withstand the test of judicial scrutiny and the provisions of Industrial Disputes Act, 1947 are clearly applicable to the daily wage employees working in such departments. The learned arbitrators has erred in holding otherwise.

3. In view of the aforesaid discussion, we find that no ground is made out to interfere in the award passed by the labour Court.

4. No other submission has been raised by the appellant. Consequently, the appeal being devoid of merit is hereby dismissed. Parties are left to bear their own costs. Stay application is also dismissed.