

(1999) 06 KAR CK 0052
In the Karnataka High Court
Case No : Writ Appeal No. 6 of 1997

The Tungabhadra Board, Tungabhadra Dam, Hospet, Bellary District

APPELLANT

Vs

Easu and another

RESPONDENT

Date of Decision : 15-06-1999

Acts Referred:

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

Citation : (2000) ILR (Kar) 402 : (1999) 4 KarLJ 716 : (2000) 4 KCCR 139 SN : (1999) 2 LLJ 1014

Hon'ble Judges : S.R. Venkatesha Murthy, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Sri B.G. Sridharan, for the Appellant; Sri K. Raghavendra Rao and Sri A. Nagarajappa, A.G.A., for the Respondent

Judgement

1. Appellant-Management (for short, "the management") has filed this appeal against the order of the Single Judge dismissing the writ petition thereby maintaining the award of the Industrial Tribunal reinstating the respondent-workman in service but without backwages.

2. Respondent-workman worked with the management for the period from 1-2-1982 to 1-10-1985 as Mazdoor. He was drawing wages as per the wage slip vouchers. His services were terminated without holding any enquiry and payment of retrenchment compensation. He raised an industrial dispute challenging his removal from service being illegal and without jurisdiction. Government of India referred the following dispute u/s 10(l)(d) of the I.D. Act to the Industrial Tribunal for adjudication:

"Whether the action of the Management of Tungabhadra Board, T.B. Dam, Bellary District in retrenching Shri Hussain Khan Chennappa, Jaffar and Venkatesh casual labourers is justified? If not, to what relief the workmen are entitled to?"

3. Management put in appearance and filed its statement of objections stating

therein that it was an autonomous body discharging sovereign functions and was not an industry. It was also contended that the workman was a casual labourer on daily wages who had worked intermittently when the canal work was undertaken and had not completed 240 days in a calendar year. That the workman was not entitled to the reliefs claimed for.

4. Management did not contest the dispute before the Industrial Tribunal with diligence. It did not file its written statement initially and when the case was fixed for evidence of the workman the management filed an application seeking permission to file its counter statement. The case was posted for documents, witness list and evidence of the management. Although the burden of proving that the workman had not put in 240 days was on the management it failed to lead any evidence in spite of several opportunities granted to it. Workman led his evidence and ultimately the Labour Court accepted the reference. Management was directed to reinstate the workman but without back wages.

5. Single Judge has rejected the contention of the management that it was discharging sovereign functions. It has been held that the management was conducting a commercial venture like any other corporation or industry and therefore an "industry" amenable to the jurisdiction of the Industrial Tribunal under the Industrial Disputes Act. Finding recorded by the Industrial Tribunal that the workman had put in more than 240 days in service was affirmed. Writ petition was dismissed affirming the award of the Labour Court.

6. Counsel appearing for the management vehemently contended that the appellant is discharging sovereign function and therefore not amenable to the provision of Industrial Disputes Act and that the worker is not entitled to reinstatement in service. Such a plea is not available to the management in view of the decision of the Constitution Bench of the Supreme Court in Bangalore Water Supply and Sewerage Board v A, Rajappa , wherein their Lordships have observed as under:

"(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" as in the case of University of Delhi and Another Vs. Ram Nath, , or some departments are not productive of goods and services if isolated, even then, the predominant 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 adventure undertaken by Government or statutory bodies".

The activity carried on by the management is certainly not a sovereign function. It is a commercial venture like any other Corporation or industry. There is no

evidence on record to show that it was discharging any sovereign functions. Finding recorded by the Single Judge in this aspect is therefore affirmed.

7. It was next contended that Irrigation Department of Government was not an industry. To substantiate this plea reliance was placed on two member judgment of the Supreme Court in *Executive Engineer, State of Karnataka v K. Somasetty*, whereunder it was held:

"It is now well-settled legal position that the Irrigation Department and Telecommunication Department are not an "industry" within the meaning of definition under the Industrial Disputes Act as held in *Union of India (UOI) Vs. Jai Narain Singh*, and in *State of Himachal Pradesh Vs. Suresh Kumar Verma and another*, . The function of public welfare of the State is a sovereign function. It is the constitutional mandate under the Directive Principles, that the Government should bring about welfare State by all executive and legislative actions. Under these circumstances, the State is not an "industry" under the Industrial Disputes Act".

It may be noted here that the learned judges did not notice the decision of the Constitution Bench in *Bangalore Water Supply and Sewerage Board's case*, supra and a decision of two member Bench of the Supreme Court in *Des Raj and Others v State of Punjab and Others*, In *Des Raj's case*, supra, it was held that the Irrigation Department in the State of Punjab is an industry. Another two member Bench of the Supreme Court had directed that the matter be placed for setting up a larger bench to reconsider the judgment in *Bangalore Water Supply and Sewerage Board's case*, supra, which was declined by a three member bench in *Coir Board, Ernakulam, Cochin and Another v P.S. Indira Devi and Others*, holding that the judgment of the Constitution Bench in *Bangalore Water Supply and Sewerage Board's case*, supra, does not require reconsideration. In view of the authoritative pronouncement of the Constitution Bench in the case cited above and the decision in *Des Raj's case*, supra, and the view taken by the three member bench of the Supreme Court that *Bangalore Water Supply and Sewerage Board's case*, supra, does not require any reconsideration, it cannot be held the Department of Irrigation or the management in the present case is not an industry. We would respectfully follow the view taken by the Supreme Court in *Des Raj's case*, supra, as compared with the view taken by the subsequent two member bench in *Executive Engineer's case*, supra, keeping in view the observations of the Constitution Bench in *Bangalore Water Supply and Sewerage Board's case* and hold that Irrigation Department is an industry and would be amenable to the jurisdiction of the Tribunal under the Industrial Disputes Act.

8. Another thing which needs to be noticed is that in *Executive Engineer's case*, supra, learned Judge had relied upon their earlier decision relating to Telecommunication Department. View taken by the Bench regarding Telecommunication Department being not an industry was specifically overruled by a three member bench of the Supreme Court in *General Manager, Telecom v*

A. Srinivasa Rao. It was held:

"A two-Judge Bench of this Court in Theyyam Joseph's case (1996)8 SCC 498 : AIR 1996 SCW 1365, held that the functions of the Postal Department are part of the sovereign functions of the State and it is, therefore, not an "industry" within the definition of Section 2(j) of the Industrial Disputes Act, 1947. Incidentally, this decision was rendered without any reference to the seven-Judge Bench decision in Bangalore Water Supply's case, supra. In a later two-Judge Bench decision in Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange Vs. Union of India and another, , this decision was followed for taking the view that the Telephone Nigam is not an "industry". Reliance was placed in Theyyam Joseph's case, supra, for that view. However, in Bombay Telephone Canteen Employees' Association's case, (i.e., the latter decision), we find a reference to the Bangalore Water Supply case. After referring to the decision in Bangalore Water Supply, it was observed that if the doctrine enunciated in Bangalore Water Supply is strictly applied, the consequences is "catastrophic". With respect, we are unable to subscribe to this view for the obvious reason that it is in direct conflict with the seven-Judge Bench decision in Bangalore Water Supply's case, supra, by which we are bound. It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in Bangalore Water Supply's case, supra, or to bypass that decision so long as it holds the field. Moreover, that decision was rendered long back nearly two decades earlier and we find no reason to think otherwise, judicial discipline requires us to follow the decision in Bangalore Water Supply's case, supra. We must, therefore, add that the decision of Theyyam Joseph's case, supra and Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange Vs. Union of India and another, , cannot be treated as laying down the correct law. This being the only point for decision in this appeal, it must fail".

9. Counsel for the appellant did not seriously challenge the finding recorded by the Tribunal and the Single Judge that the workman had completed 240 days of service in a calender year.

10. For the reasons stated above, we do not find any merit in this appeal and dismiss the same with no order as to costs.