Physical Research Laboratory vs K.G. Sharma on 8 April, 1997

Equivalent citations: AIR 1997 SUPREME COURT 1855, 1997 (4) SCC 257, 1997 AIR SCW 1594, 1997 LAB. I. C. 1912, 1997 LAB LR 401, 1997 (3) SERVLJ 1 SC, 1997 (3) SCALE 479, (1997) 4 JT 527 (SC), (1997) 3 SERVLJ 1, (1997) 3 SUPREME 695, 1997 (4) JT 527, (1997) 3 SCR 733 (SC), (1997) 90 FJR 485, (1997) 2 LABLJ 625, (1997) 2 SCJ 696, (1997) 2 SERVLR 593, (1997) 3 SCALE 479, (1997) 1 CURLR 1116, (1997) 2 LAB LN 668, (1997) 2 SCT 492, (1997) 76 FACLR 212, 1997 SCC (L&S) 1057, (1998) 1 GUJ LR 218

Bench: K. Ramaswamy, G.T. Nanavati

PETITIONER:
PHYSICAL RESEARCH LABORATORY

Vs.

RESPONDENT:
K.G. SHARMA

DATE OF JUDGMENT: 08/04/1997

BENCH:
K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T NANAVATI. J.

Leave granted.

The question that arises for consideration in this appeal is whether physical Research Laboratory (for short 'PRL'), the appellant, is an 'industry' within the meaning of section 2(j) of the Industrial Disputes Act.

The facts and circumstances which gave rise to this question are as follows. The respondent was appointed by PRl as Scientific Glass Blower on 25.10.48. He continued to word as such till 11.5.76 when he was transferred to photography Documentation services on a post which was non-technical and administrative. On 31.12.78 he attained the age of 58 years. He was, therefore. retired from service with effect form 1.1.79. Feeling aggrieved by his retirement at the age of 58 years and not at 60 he filed a writ petition in the High court of Gujarat by it was with He then filed a complaint before the Labour commissioner who, on the basis thereof, made a reference to the Labour court at Ahmedabad.

The Labour Court rejected the contention of the appellant that it was not an 'industry' within the meaning of Section 2(j) of the I.D. Act. Though it recorded a finding that PRL is purely a research institute and the research work carried on by it is not connected with production supply or distribution of goos or services yet it took the aforesaid view following the decision of this court in Bangalore Water Supply & Sewerage Board Vs. A. Rajappa 1978 (2) SCC 213 as it further found that PRL is carrying on, in an organised and systematic manner, the activity of research in its laboratory by active co-operation between itself and its employees and the discoveries and invention made would be eligible for sale. in taking the view that PRL is an 'industry' it also followed the decision of the Gujarat High court in physical Research Laboratory Employees Union vs. A.N. Ram (special civil Application No. 1082 of 1979), a case under the Trade Unions Act, wherein it was observed that "In view of the decision of the supreme Court in Bangalore Water Supply & Sewerage Board v. A. Rajappa and others A.I.R. 1978 S.C. 548, it is not open to doubt that the employees working with the physical Research Laboratory Ahmedabad, would come within the definition of " workmen"

> under the Industrial Disputes Act and other similar legislation in the field of relations between employers and employees." on merits, it held that the respondent having worked for a long period from 1948 to 1976 on a technical post could not have been treated as a person working on the administrative side merely because towards the fag end of his career he was transferred to a post on the administrative side and at the time of attaining the age of 58 years he was working on such a post. The Labour Court held that the respondent was entitled to continue in service up to the age of 60 Years. Therefore, the order, retiring him earlier, was declared as bad and it was held that he was entitled to reinstatement with full back wages. As the respondent had already completed the age of 60 years by then no order of reinstatement was passed but only back wages for those two years were ordered to be paid.
>
> The appellant has approached this court directly against the award of the Labour court as the Gujarat High court has already taken the views that PRL is an 'industry' and different High court and Tribunals have expressed conflicting views on the question whether research institutes run by the Government can be said to be 'industry' as defined by section 2(j) of the I.D. Act. on 1.2.93, when special Leave petition, out of which this appeal arises, was listed for hearing a statement was made by the learned counsel for the appellant that irrespective of the decision on merits this court should decide whether research institute of the type of PRL can be said to be 'industry'. This court passed an order for issuing notice indicating that the matter

will be finally disposed of at the notice stage itself.

Our attention was first drawn by the learned Attorney General who appeared for the appellant to the facts which are not in dispute. PRL is a public trust registered under the Bombay public Trust Act., 1950. It is a research institute and was established bu Dr. Vikram Sarabhai for research in space and allied science. It is financed mainly by the central Government by making provision in that behalf in the Union Budget and nominally by the Government of Gujarat, Karmakshetra Education Foundation and Ahmedabad Eduction society. it is virtually an institute falling under Government of India's Department of space. Its object is to conduct and is, therefore, engaged in conducting advance research in (1) astronomy and Astrophysics, (2) planetary atmosphere and aeronomy , (3) earth science and solar system studies and (4) theoretical physics. It is the case of the appellant that the research work is done in the institute by eminent scientists who engage themselves in resolving problems of fundamental sciences on their own. It is not directly of indirectly carrying on any trade or business and its activities do not result into production or distribution of goods or services calculated to satisfy human wants and wishes. The knowledge acquired as a result of the research carried on by it is not sold but is utilised for the benefit of the government. it was, therefore, submitted by the learned Attorney General that PRL being a purely research institute of the central Government engaged in carrying on fundamental research regarding the origin and evolution of the Universe and the atmosphere of the earth is not an 'industry' as defined by section 2(j). He further submitted that the activity of research is carried on mainly by the scientists engaged for that purpose and incidentally with the help of a few other employees. He also submit that the research work carried on by the PRL is more in the nature of venture and, therefore, also it would not fall within the purview of section 2(j) of the I.D. Act. The question : what is an 'industry' under the Industrial Disputes Act ? has been answered by this court in Bangalore Water Supply case (supra) as under :

"I

140. 'Industry', as defined in Section 2(j) and explained in Banerji (supra) , 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) (ii) 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 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 speical emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not case to be one because of philanthropy animating the undertaking. II

141. 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 a explained in Banerji (supra) and in this judgment; so also, service calling and the like.

This yields the inference that all organized 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' analogous to the carrying on the trade or business'.

All features, other than the methodology of carrying on the activity viz. in organizing the co-

operation between employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III

142. 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 pease, regulation and workmen, the range of this statutory must inform the reach of the statutory definition.

Nothing less, nothing more

(a) The consequences are (i) professions, (ii) clubs, (iii) educational instituions, (vi) co-

operative (v) research institutes,

(vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I(supra), cannot be exempted from the scope of section 2(j).

(b) A restricted category of professions clubs, co-operative and even gurukulas and little research labs, may 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-employe character of the unit.

(c) If in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in free medical centre or 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 servants relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired.

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Such    eleemosynary     or    like
undertakings alone  are exempt    -
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not other generosity, compassion, developmental passion or project IV

143. The dominant nature test :

> (a) Where a complex of activities some of which qualify for exemption, others not, involves employees on the total undertakings, some of whom are not 'workmen' as the University of Delhi case (supra) 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 corporation for Nagpur (supra), will be, 'industry' although those are not 'workmen' by definition may not benefit by the status.
>
> (b) Notwithstanding the previous clauses, sovereign function, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaking by government or statutory bodies.
>
> (c) Even in departments discharging sovereign function, if there are units which are industries and they are substantially severable, then they can be considered to come within section 2(j)
>
> (d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act. categories which otherwise may be covered thereby."

Therefore, the question whether PRL is an 'industry' under the I.D. Act will have to be decided by applying the above principles; but , at the same time it has to be kept in mind that these principles were formulated as this court found the definition of the word 'industry' as vague and "rather clumsy, vapourous and tall-and-dwarf". Therefore, while interpreting the words 'undertaking' calling and 'service' which are of much wider import, the principle of 'noscitur a sociis' was applied and it was held that they would be 'industry' only if they are found to be analogous to trade of business. Furthermore an activity undertaken by the Government cannot be regarded as 'industry' if

it is done in discharge of its sovereign function. one more aspect to be kept in mind is that the aforesaid principles are not exhaustive either as regards what can be said to be sovereign function or as regards the other aspects dealt with by the court.

In this context, it is useful to chief Conservator of Forests and another vs. Jagannath Maruthi Kondhare , 1969(2) SCC 293 wherein this court, while rejecting the contention that as sovereignty vests in the people the concept of sovereign functions would include all welfare activities on the ground that talking of such a view would erode the ratio in Bangalore water supply, case. Observed that "the dichotomy of sovereign and non-sovereign function does not really exit - it would all depend on the nature or the power and manner of its exercise" After referring to the three traditional sovereign function namely legislative power the administration of laws and the exercise of the judicial power and also the decision of the exercise of the judicial power and also the decision of the Gujarat High court in J.J. Shrimali vs. District Development Officer 1989(1) GLR 396, wherein famine and drought relier works undertaken by the state Government were held not to and 'industry' this court observed that "what really follows from this judgment is that apart from the aforesaid three functions there may be some others functions also regarding which a view could be taken that the same too is a sovereign function".

In sub-Divisional Inspector of Post, Vaikam and others vs. Theyyam Joseph and others, 1996 (8) SCC 489, this court had to sub-Divisional Inspector of post at Vaikam is an 'industry'. Therein this court has observed that "India as a sovereign, socialist, secular, democratic republic has to establish an egalitarian social order under rule of law. The welfare measures partake the character of sovereign function and the traditional duty to maintain law and order is no longer the concept of the state. Directive principles of state policy enjoin on the state diverse duties under part IV of the constitution and the performance of the duties are constitutional functions. One of the duties of the state is to provide telecommunication service to the general public and an amenity and so is an essential part of the sovereign functions of the state as a welfare state. It is not , therefore, an industry" . While taking this view this court was also influenced by the fact that, the method of recruitment, the conditions of the Extra-Departmental Agents employed said establishment are governed by the statutory rules and regulations and that those employees are civil servants Therefore, while applying the traditional test, approved by this court in Bangalore water supply case to determine what can be regarded as sovereign function the change in the concept of sovereign function of a constitutional government has to be kept in mind. Relying upon these two in chief conservator of Forests vs. Jagannath Maruthi Kondhare (supra) and sub-Divisional Inspector of post vs. Theyyam Joseph and others (supra), it was contended by the learned work carried on by PRL should be regarded as a sovereign or governmental function.

With respect to research institutes this court in Bangalore water supply has observed as under :

" Does research involve collaboration between employer and employee ? It does. The employer is the institution the employee are the scientists, para - scientists and other personnel. Is scientific research service ? Undoubtedly. It is. Its discoveries are valuable contributions to the wealth of the nations, such discoveries may be sold for a heavy price in the industrial of other markets.

Technology has to be paid for any technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more case value, as intangible goods and invaluable services than discoveries . it has been said that his brain had the highest cash value in history for he made the word vibrate with the miraculous discovery of recorded sound. unlike most inventors he did not have he received it munificently on this gratified and grateful earth thanks to conversion of his inventions into money aplenty. Research benefits industry even though a research institute may be a separate entity disconnected from the many industries which funded the institute may be a separate entity disconnected from the many industries which funded the institute itself it can be regarded as an organisation propelled by systematic activity modelled on co- operation between employer and employee and inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth.

It follows that research institutes, albeit run without profit-motive, are industries."

PRL is an institution under the Government of India`s Department of Space. It is engaged in pure research work is already stated earlier. The purpose of the research is to acquire knowledge about the formation and evolution of the universe but the knowledge thus acquired is not intended for sale. The Labour Court has recorded a categorical finding that the research work carried on by PRL is not connected with production supply or distribution of material goods or services. The material on record further discloses that PRL is conducting research not for the benefit or use of others. Though the results of the research work done by it are occasionally published they have never been sold. There is no material to show that the knowledge so acquired by PRL is marketable or has any commercial value. IT has not been pointed out how the knowledge acquired by PRL or the results of the research occasionally published by it will be useful to persons other than discloses that the object type of study. The material discloses that the object with which the research activity is undertaken by PRL is to obtain knowledge for the benefit of the Department of Space. Its object is not to render services to others nor in fact it does so expect in an indirect manner.

It is nobody`s that PRL is engaged in an activity which can be called business trade or manufacture. Neither from the nature of its organisation nor from the nature and character of the activity carried on by it, it can be said to be an `undertaking' analogous to business or trade. It is not engaged in a commercial industrial activity and it cannot be described as an economic venture or a commercial enterprise as it is not its object to produce and distribute services which would satisfy wants and needs of the consumer community. It is more an institution discharging Governmental functions and a domestic enterprise than a commercial enterprise. We are, therefore, of the opinion that PRL is not an industry even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks that element which would make it an organisation carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs, as ordinarily understood.

We, therefore, allow this appeal and set aside the award passed by the Labour Court at Ahmedabad in Reference No. LCA 105 of 1982. However, in view of the facts and circumstances of the case there shall be no order as to costs.