Supreme Court of India
General Manager, Telecom vs S.Srinivasa Rao & Ors on 18 November, 1997
Author: V I.
Bench: Cji, B.N. Kirpal, V.N. Khare

PETITIONER:
GENERAL MANAGER, TELECOM

Vs.

RESPONDENT:
S.SRINIVASA RAO & ORS.

DATE OF JUDGMENT: 18/11/1997

BENCH:
CJI, B.N. KIRPAL, V.N. KHARE

ACT:

HEADNOTE:

JUDGMENT:

THE 18TH DAY OF NOVEMBER, 1997 Present:

Hon'ble the Chief Justice Hon'ble Mr. Justice B.N Kripal Hon'ble Mr. Justice V.N. Khare N.N. Goswami, Sr. Adv., Arvind Kumar Sharma, Ms. Anubha Jain, Ms. Kanupriya Mittal, Advs. with him for the appellant.

Rakesh Luthra, Ms. Pooja Dua and L.R. Singh, Advs., for the Respondents.

J U D G M E N T The following Judgment of the Court was delivered: Verma, C.J.I.

Delay condoned.

Leave granted.

This matter comes up before a three-judge Bench because of a Reference made by a two-judge Bench which doubted the correctness of an earlier two-judge Bench decision of this Court in Sub-Divisional Inspector of Post, Vaikam & Ors. vs. Theyyam joseph & Ors. (196) 8 SCC 489. It was stated at the Bar that a later two-judge Bench decision reported as Bombay Telephone Canteen

Employees' Association vs. Union of India

- AIR 1997 Supreme Court 2817 also takes the same view as in the case of Theyyam Joseph.

The only point for decision in this in this appeal is whether the Telecom Department of the Union of India is an industry within the meaning of the definition of 'industry' in Section 2(j) of the Industrial Disputes Act, 1947. It may here be observed that the amendment made in that definition in 1982 has not been brought into force by the Central Government by issuance of notification required for the purpose. It is, therefore, not necessary for us to consider whether the telecommunication Department of the Union of India would be an 'industry' within the meaning thereof in the amended provision which is not yet brought into force. We are, in this matter, concerned with the earlier definition of 'industry' which continues to be in force and which was subject of consideration by a seven judge Bench in Bangalore Water supply and Sewerage Board vs. A Rajappa & Ors. (1978) 2 SCC 213.

The above point arises for consideration out of a reference made under Section 10A of the Industrial Disputes Act, 1947, which matter is now pending in the High Court. The contention of the appellant throughout has been that the Reference was incompetent wince the Telecommunication Department of the Union of India is not an 'industry' within the meaning of its definition contained in the existing un- amended Section 2(j) of the Industrial Disputes Act, 1947. Admittedly, this question has to be answered according to the decision of this Court in Bangalore water Supply (supra) which is a binding precedent. The dominant nature test for deciding whether the establishment is an 'industry' or not is summarised in para 143 of the judgment of justice Krishna Iyer in Bangalore Water Supply case (supra) which is as under:

143. The dominant nature test:

> (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 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 of Nagpur (supra), will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit buy status.
>
> (b) Notwithstanding the previous clauses sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures under-taken 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 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."

It is rightly not disputed by the learned counsel for the appellant that according to this test the Telecommunication Department of the Union of India is an 'industry' within that definition because it is engaged in a commercial activity and the Departments not engaged in discharging any of the sovereign functions of the State.

A two-Judge bench of this Court in Theyyam Joseph's case (1966)8 SCC 489 (supra) 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. Incidently, this decision was rendered without any reference to the seven-judge Bench decision in Bangalore Water Supply (supra). In a later two-judge Bench decision in Bombay Telephone Canteen Employees' Association case - AIR 1997 SC 2817, this decision was followed for taking the view that the Telephone Nigam is not an 'industry'. Reliance was placed in Theyyam joseph's case (1996) 8 SCC 489 (supra) for that view. However, in Bombay Telephone Canteen Employees' Association 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 consequence 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 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 (supra) or to by pass 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 case (1978) 2 SCC 213. We must therefore, add that the decisions in Theyyam Joseph (1996) 8 SCC 489 and Bombay Telephone Canteen Employees' Association (AIR 1997 Supreme Court 2817) cannot be treated as laying down the correct law. This being the only point for decision in this appeal, it must fail.

Accordingly, the appeal is dismissed. No Costs.