Supreme Court of India
Coir Board, Ernakulam, Cochin And ... vs Indira Devi P.S. And Ors on 4 March, 1998
Bench: Mrs. Sujata Manohar, D.P. Wadhwa

CASE NO.:
Appeal (civil) 1720-1721 of 1990

PETITIONER:
COIR BOARD, ERNAKULAM, COCHIN AND ANR.

RESPONDENT:
INDIRA DEVI P.S. AND ORS.

DATE OF JUDGMENT: 04/03/1998

BENCH:
MRS. SUJATA V. MANOHAR & D.P. WADHWA

JUDGMENT:

JUDGMENT 1998 (2) SCR 87 The Judgment of the Court was delivered by MRS. SUJATA V. MANOHAR, J. In these appeals from a judgment of the Full Bench of the Kerala High Court, we have to examine whether the appellant- Coir Board is an industry as defined in the Industrial Disputes Act, 1947. The appellant-Coir Board, Ernakulam, Cochin, has been set up under the Coir Industry Act, 1953. In the Statement of Objects and Reasons for the Act, it is stated "(1) The Coir Industry has definite role to play in our national economy. It is of very great economic importance to Travancore Cochin where it is concentrated and also, from the point of view of earning foreign exchange, of importance to the whole country. It has, however, been passing through acute depression since the middle of 1952 as a result of the marked decline in exports. With a view to controlling production, improving its quality, weeding out the undesirable elements in the export trade and developing the internal market so as to reduce the industry's dependence on exports, it is considered necessary to establish a Statutory Board on the lines of Boards set up for other plantation industries.

(2) In order to finance the development of this industry it is proposed that a duty up to Rs. 1 per cwt. should be levied on coir fibre, coir yarn as well as coir mats and matting exported....." The Preamble to the Act states that it is an Act to provide for the establishment of a Board for the development of the coir industry and for that purpose to levy a customs duty on coir fibre, coir yam and coir products exported from India and for matters connected therewith. Section 10 of the Coir Industry Act, 1953 lays down the functions of the Board :-

Section 10 :

"Functions of the Board :- (1) It shall be the duty of the Board to promote by such measures as it thinks fit the development under the control of the Central Government of the coir industry.

(2) Without prejudice to the generality of the provisions of sub-sec. (1) the measures referred to therein may relate to ;

(a) promoting exports of coir yarn and coir products and carrying on propaganda for that purpose;

(b) regulating under the supervision of the Central Government the production of husks, coir yam and coir products by registering coir spindles and looms for manufacturing coir products as also manufactures of coir, coir yam and coir products and taking such other appropriate steps as may be prescribed;

(c) undertaking, assisting or encouraging scientific, technological and economic research and maintaining and assisting in the maintenance of one or more research institutes;

(d) collecting statistics from manufacturers of and dealers in, coir products and from such other persons as may be prescribed, on any matter relating to the coir industry; the publication of statistics so collected or portions thereof or extracts there from;

(e) fixing grade standards and arranging when necessary for inspection of coir fibre, coir yarn and coir products;

(f) improving the marketing of coconut husk, coir fibre, coir yam and coir products in India and elsewhere arid preventing unfair competition;

(f) setting up or assisting in the setting up of factories for the production of coir products with the aid of power;

(g) promoting co-operative organisation among producers of husks, coir fibre and coir yarn and manufacturers of coir products;

(h) ensuring remunerative returns to producers of husks, coir fibre and coir yarn and manufacturers of coir products;

(i) licensing of resting places and warehouses and otherwise regulating the stocking and sale of coir fibre, coir yarn and coir products both for the internal market and for exports;

(j) advising on all matters relating to the development of the coir industry;

(k) such other matters as may be prescribed.

(1) The Board shall perform its functions under this section in accordance with and subject to such rules as may be made by the Central Government." For the purpose of improving the marketing of coir products and for promoting exports the coir Board, inter alia, maintains show rooms and sales depots. The function of the show rooms is to exhibit quality samples of coir and coir products, arid make intends for products and, receive consignments from manufacturers and/or merchants of coir products. The products are sold through the show rooms for which the Coir Board charges a commission. The consignors of such products have to be registered with the coir Board and these are private co-operatives of coir manufacturers. The marketing personnel in each of the show rooms

or sales depots helps in promoting their sale.

The Coif Board had employed certain temporary clerks and typists who were discharged. They claim that their services could only be terminated in accordance with the provisions of the Industrial Disputes Act, 1947.

A Full Bench of the Kerala High Court considered the question of application of the Industrial Disputes Act to the appellant-Coir Board along with a similar question raised in respect of a large number of Government Departments, Government companies, other statutory corporations and local bodies, in the impugned judgment. After extensively dealing with the various decisions of this Court on what is an 'industry' and who is a 'workman' under the Industrial Disputes Act, the High Court has come to the conclusion, inter alia, that Coir Board is an 'industry' as defined in the industrial Disputes Act. Hence chapter V-A of the Industrial Disputes Act would be applicable in respect of termination of the services of its temporary clerks and typists.

'Industry' is defined in section 2 (j) of the Industrial Disputes Act, 1947 as "any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment handicraft or industrial occupation or avocation of workmen". The term 'employer' is defined in Section 2(g) to mean "(0 in relation to an industry carried on by or under the authority 6f any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department; (ii) in relation to an industry carried on by or oh behalf of a local authority, the chief executive officer of that authority." The term 'workman' in Section 2(s) is defined to mean "any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied; and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged, or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person....."

Thus, while employer is defined in the context of an industry and the workman is also defined as a person employed in any industry, the term 'industry' itself has been defined to mean business, trade, manufacture, undertaking or calling. While the terms 'business, trade, manufacture or calling' are fairly clear, the term 'undertaking' which accompanies these four words has given scope for judicial expansion of the meaning of the word 'industry'. The words 'service, employment and avocation of workmen' also being somewhat imprecise, like the word 'undertaking', have led to varying definitions of 'industry' being given: from time to time by judicial pronouncements when the courts were called Upon to decide whether any particular organisation could be considered as an industry or not.

In one of the early cases before this court, D.N. Banerji v. P.R. Mukherjee, AIR (1953) SC 58, a Bench of five judges considered the question whether a municipal corporation could be considered as an industry and the dispute of its employees with it could be considered as an industrial dispute. The Court observed (para 13) that the words 'industrial dispute' convey the idea of a dispute that

would affect large groups of workmen and employers renged on opposite sides, on some general questions on which each group is bound together by a community of interests-such as wages, bonus, allowances, working hours and so on. In branches of work of a municipality analogous to carrying on of a trade or business, the dispute can be considered as an industrial dispute; A similar view was taken in the case of The Corporation of the City of Nagpur v. Its Employees, [1960] 2 SCR

942. In The State of Bombay & Ors. v. The Hospital Mazdoor Sabha & Ors., AIR (1960) SC 610 the word 'undertaking' in the definition of an industry was held to connote an activity systematically and habitually undertaken for production or distribution of goods or for rendering material services to the community at large or a part of such community with the help of employees. Profit motive was considered as not relevant. This view of an industry covered organisations which would not have normally been considered as industries. But this Court observed that the conventional meaning of trade and business had lost some its validity for the industrial Disputes Act which was a welfare measure for the benefit of workers.

Thus, by eliminating, the purpose of an industrial activity as earning of profits or income or returns, the Court brought into the sweep of an industry, activities such as charities, Government hospitals giving free medicines and medical care or other philanthropic activities. Even activities such as education, recreation, research and the like that benefit the community as a whole came under the label of 'industry'. In fact, by considering the term 'undertaking' in this fashion, all kinds of organised activities which would ordinarily not have been considered as industries at all and which would not have been otherwise considered as industries even under the Industrial Disputes Act were now 'industries' under the Industrial Disputes Act. Because if we look at the language of the definition of 'industry' in the Industrial Disputes Act and interpret the word 'undertaking' appearing along with the words 'trade, business and manufacture or calling' by applying the principle of noscitur sociis, 'undertaking' would cover activities similar to trade, business. manufacture of goods or calling and not other kinds of activity:

However, the same non-conventional interpretation was reiterated in the case of The Workmen of Indian Standards Institution v. The Management of Indian Standards Institution, AIR (1976) SC 145 by saying that the widest possible connotation should be given to the word 'industry' since Industrial Disputes Act was a welfare legislation for the welfare of workers. Therefore Indian Standards Institution was held to be an industry.

At the same, there has been another set of cases of this court and a number of High Courts where a slightly more restricted and conventional meaning has been given to the term 'industry' as defined in the Industrial Disputes Act For example, in National Union of Commercial Employees & Anr. v. M.R. Meher, Industrial Tribunal, Bombay & Ors., AIR(1962) SG 1080 the case of State of Bombay v. Hospital Mazdoor Sabha (supra) was distinguished and it was held that a liberal profession such as that of an attorney was not an industry because the attorney does riot carry on his profession with the active co-operation of his employees. He brings to bear his intellectual equipment on the work he does. Similarly in the case of University of Delhi and Anr. v. Ram Nath and Ors., (1963) 2 L.L.J. 335 this court had held an educational institution was not an industry.

In the case of The Secretary, Madras Gymkhana Club Employees' Union v. The Management of the Gymkhana Club, AIR (1968) SC 554 this Court held that every activity which involves the relationship of an employer and employee is not necessarily an industry. After examining the vast range of human activities, this Court held that in on industry co-operation between employers and employees was with a view to production and distribution of material goods or material services. A club was not an industry since its services were to the members themselves for their own pleasure and amusement and material goods were for their own consumption. It was a self- serving organisation and was not an industry. Following the same judgment, in the Cricket Club of India v.Bombay Union and Anr., AIR (1969) SC 276, the Cricket Club of India was held not to be an industry.

In the next year, in the case of The Management of Safdar Jung Hospital, New Delhi v. Kuldip Singh Sethi, AIR (1970) SC 1407 a Bench of six judges of this Court unanimously followed the ratio of the Madras Gymakhana Club's case (supra) and held that the Safdar Jung Hospital was not an industry. In the case of Safdar Jung Hospital (supra), a Bench of six judges unanimously held that an industry as defined in Section 2(j) exists only when there is a relationship of employers and employees, the former engaged in business, trade, undertaking, manufacture or calling of employers and the latter engaged in any calling service, employment, handicraft or industrial occupation or avocation. There must, therefore, be an enterprise in which the employers follow their avocation as detailed in the definition and employ workmen who follow one of the avocations detailed for workmen. But every case of employment is not necessarily productive of an industry. Domestic employment, administrative services of public officials, service in aid of occupations of professional men also disclose relationship of employers and employees but they cannot be regarded as in the course of industry. It must bear the definite character of trade or business or manufacture or calling or must be capable of being described as an undertaking resulting in material goods or material services. If a hospital, nursing home or dispensary is run as a business in a commercial way there may be found elements of an industry there. Hospitals run by Government and even by private associations not on commercial lines but on charitable lines, or as part of the functions of Government Department of Health cannot be included in the definition of industry. The first and second parts of the definition are not to be read in isolation as if they were different industries but only as aspects of the occupation of employers and employees in an industry. They are two counterparts in one industry.

The same position had been earlier reiterated by a three judge Bench of this Court in the ease of Madras Gymakhana Club (supra) where also this Court had interpreted the definition of industry as being in two parts. In its first part, it means any business, trade, undertaking, manufacture or calling of employers. This part of the definition determines an industry by reference to occupation of employers in respect of certain activities, These activities are specified by five words and they determine what an industry is and what the cognate expression "industrial" is intended to conveys The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By the second part of the definition, any calling, service, employment, handicraft of industrial occupation or avocation of workmen is included in the concept of an industry. This part gives the extended connotation. This Court also said that the word 'undertaking' must be defined as any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade. It did not accept as correct the extension of

the definition as laid down in The Corporation of the City of Nagpar v. Its employees (supra).

However, this view which was reaffirmed in Safdar Jung Hospital's case (supra), by a decision of six judges of this court, as well as the University of Delhi's case (supra) were overruled in 1978 by a decision of a Bench of seven judges of this court in the case of Bangalore Water Supply & Sewerege Board etc. v. A. Rajappa & Ors. etc., [1978] 2 SCC 2)3 by a majority of five with two dissenting.

The definition of Industry under the Industrial Disputes Act was held to coverall professions, clubs, educational institutions, co-operatives, research institution charitable projects and anything else which could not looked upon as organised activity where there was a relationship of employer and employee and goods were produced or service was rendered. Even in the case of local bodies and administrative organisations the court evoled a 'predominant activity' test so that whenever the predominant activity could be covered by the wide scope of the definition as propounded by the court, the local body or the organisation would be considered as an industry. Even in those cases where the predominant activity could not be so classified, the court included in the definition all those activities of that organisation which could be so included as industry, departing from its own earlier test that one had to go by the predominant nature of the activity. In fact, Chandrachud, J. (as he then was) observed that even a defence establishment or a mint or a security press could, in a given case, be considered as an industry. Very restricted exemptions were given from the all embracing scope of the definition so propounded. For example, pious or religious missions were considered exempt even if a few servants were hired to help the devotees. Where normally no employees were hired but the employment was marginal the organisation would not qualify as an industry. Sovereign functions of the State as tarditically understood would also not be classified as industry though Government department which could be served and labelled as industry would not escape the Industrial Disputes Act.

The majority laid down the 'dominant nature' test for deciding whether the establishment is an industry or not (see paragraph 143, Krishna Iyer, J.):

"Para 143: The dominant nature test;

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees of 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 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 the 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"

Two judges dissented from this view. They said that bearing in mind the collocation of terms in which a definition is couched and applying the doctrine of noscitur a sociis as pointed out in the Hospital. Mazdoor Sabha's case (supra), when two or more words are coupled together they have to be understood as being used in their cognate sense taking their colour from each other. Meaning of a doubtful word may be ascertained by reference to the meaning of the words associated with it. Therefore, despite the width of the definition of 'industry' in Section 2(j) it could not have been the intention of the legislature that hospitals run on charitable basis or as part of the functions of the Government or local bodies like municipalities and education and research institutions whether run by private entities or by Government and liberal and learned professions like doctors, lawyers etc. the pursuit of which is dependent upon the individual's own education, intellectual attainments and special expertise, should fall within the pale of the definition. They were 'of the view that the definition is limited to those activities systematically or habitually undertaken on commercial lines by private entrepreneurs with the co- opreation of employees for the production or distribution of goods or for rendering material service to the community at large or a part of such community. They observed that this Court had also in previous decisions felt the necessity of excluding some callings, services and undertakings from the purview of the definition. Even the majority was of the view that legislative exercise was necessary to settle, the position.

The subsequent decisions of this Court have left some: uncertainty on the question of activities and organisations that can be Labelled as industries under the Industrial Disputes Act. To take only a few recent cases, in the case of Physical Research Laboratory v. K.G. Sharma, [1997] 4 SCC 257 this Court, after discussing the definition of industry as propounded in the Bangalore Water Supply Case (supra) and other cases ultimately came to the conclusion that a Physical Research Laboratory was net an industry. This Court emphasised that the principles which were formulated in the Bangalore Water Supply. Case (supra) were formulated because this Court found the definition of the word 'industry' vague. Therefore, while applying the 'traditional' test approved by this Court in the Bangalore Water Supply's, Case (supra) to determine what can be regarded as sovereign functions, the change in the concept of sovereign functions, the change in the concept of sovereign functions of a constitutional Government which involved varied functions had to be kept in mind. The activity of a Physical Research Laboratory would not be covered by the definition of an industry under Industrial Disputes Act.

In a earlier judgment in the case of Sub-Divisional Inspector of Post, Vaikam & Ors.v. Theyyam Joseph & Ors., [1996] 8 SCC 489, me establishment of the Sub-Divsional Inspector of Post was held not to be an industry but as an exercise of a sovereign function. In the case of Bombay' Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange v. Union of India & Anr.. [1997] 6 SCC 723, this court, after examining the case law, held that workman employed in the departmental canteen of Telephone Nigam Limited and admittedly holding civil posts were not workmen within the meaning of the Industrial Disputes Act. However, a Bench of three judges of this court in Civil Appeal NO. 7845 of 1997. General Manager, Telcom v. S. Srinivasa Rao & Ors., decided on 18.11.1997 held that the cases of Sub- Divisional Inspector of Post (supra) and Bombay Telephone

Centeen Employees' Association, Prabhadevi Telephone Exchange, (supra) were not correctly decided in view of the ratio laid down by a Bench of seven judges of this Court in the case of Bangalore Water Supply and Sewerage Board (supra).

Looking to the uncertainty prevailing in this area and in the light of the experience of the last two decades in applying the test laid down in the case of Bangalore Water Supply and Sewerage Board, (supra) it is necessary that the decision in Bangalore Water Supply and Sewerage Boards case (supra) is re-examined. The experience of the last two decades does not appear to be entirely happy. Instead of leading to industrial peace and welfare of the community (which was the avowed purpose of artificially extending the definition of industry), the application of the Industrial Disputes Act to organisations which were, quite possibly not intended to be so covered by the machinery set up under the Industrial Disputes Act, might have done more damage than good, not merely to the organisations but also to employees by the curtailment of employment opportunities, Undoubtedly, it is of paramount importance that a proper law is framed to promote the welfare of labour employed in industries. It is equally important that the welfare of labour employed in other kinds of organisations is also prompted and protected. But the kind of measures which may be required for the latter may be different and may have to be tailored to suit the mature of such organisations, their infrastructure and their financial capacity as also the needs of their employees.

The elimination of profit motive or a desire to generate income as the purpose of industrial activity has led to a large number of philanthropic and charitable activities be ing affected by the Industrial Disputes Act. In a number of cases where the organisation is run by voluntary social workers, they are unable to cope with the requirements of Industrial Disputes Act. This has led to a cessation of many welfare activities previously undertaken by such organisations which has deprived the general community of considerable benefit and the employees of their livelihood. There are many activities which are undertaken not With a view to secure any monetary return-whether one labels it as livelihood, income or profit, but for other more generous or different motives. Such activities would not normally be labelled as industrial activities, but for the wide interpretation given judicially to the term 'industry' in the Industrial Disputes Act, For example, a number of voluntary organisations used to run workshops in order that the poor and more particularly poor or destitute woman may earn some income. Voluntary welfare organisations organised activities like preparation of spices, masalas, pickles or they would secure small orders from industries for poor woman. A small number of persons were employed to assist in the activities. The income earned by these activities was distributed to the woman who were given such work. Other voluntary organisations organised tailoring or embroidery classes or similar activities for poor woman and provided an outlet for the sale of the work produced by them. These persons would otherwise have found it impossible to secure a market for their products. Such organisations are not organised like industries and they do not have the means or manpower to run them as industries. A large number of such voluntary welfare schemes have had to be abandoned because of the wide interpretation given to the term industry.

Apart from such activities, there may be other activities also which are undertaken in the spirit of community service, such as charitable hospitals where free medical services and free medicines may be provided. Such activities may be sustained by free services, given by professional men and

women and by donations. Sometimes such activities may be sustained by using the profits in the paid section of that activity for providing free services in the free section. Doctors who work in these hospitals may work for no returns or sometimes for very nominal fees. Fortunately, philanthropic instinct is far from extinct. Can such philanthropic organisations be called industries? The definition needs re-examination so that, while the workers in an industry have the benefit of industrial legislation, the community as such is not deprived of philanthropic and other vital services which contribute so much to its well-being. Educational services and the work done by teachers in educational institutions, research organisations, professional activities, or recreational activities amateur sports, promotion of arts-fine arts and performing arts, promoting crafts and special skills, all these and many other similar activities also require to be considered in this context, In fact, in 1982 , the Legislature itself decided to amend the definition of 'industry' under the Industrial Disputes Act, 1947 by enacting the Amending Act 46 of 1982. In the statement of Objects and Reasons for the Amending Act 46 of 1982, Clause 2 expressly refers to the decision of this Court in Bangalore Water Supply and Sewerage Board (supra) and the wide interpretation given to the definition of the term industry in the Industrial Disputes Act. The Statement of Objects and Reasons states, inter alia, as follows :-

"The Supreme Court in its decision in the Bangalore Water Supply and Sewerage Board v. Rajappa, [1978] 2 SCC 213; [1978] SCC (L&S) 215; AIR (1978) SC 548 had, while interpreting the definition of "industry" as contained in the Act, observed that Government might restructure this definition by suitable legislative measures. It is accordingly proposed to redefine the term "industry". While doing so, it is proposed to exclude from the scope of this expression, certain institutions like hospitals and dispensaries, educational, scientific, research or training institutes, institutions engaged in charitable, social and philanthropic services, etc., in view of the need to maintain in such institutions and atmosphere different from that in industrial undertakings and to meet the special needs of such organisations. It is also proposed to exclude sovereign functions of Government including activities relating to atomic energy, space and defence research from the purview of the term "industry". However, keeping in view the special characteristics of these activities and the fact that their woman also need protection, it is proposed to have a separate law for the Settlement of individual grievances as well as collective disputes in respect of the workman of these institutions. All these term "industry" had been made more specific while making the coverage wider."

Unfortunately, despite the legislative mandate the definition has not been notified by the Executive as having come into force.

Since the difficulty has arisen because for the judicial interpretation given to the definition of "industry" in the Industrial Disputes act. there is ho reason why the matter should not be judicially re-examined. In the present case, the function of the Coir Board is to promote coir industry, open markets for it and provide facilities to make the coir industry's products more marketable. It is not Set up to run any industry itself. Looking to the predominant purpose for which it is set up we would not call it an industry. However, if one were to apply the tests laid down by Bangalore Water Supply and Sewerage Board's case (supra), it is an organisation where there are employers and employees. The organisation does some useful work for the benefit of others. Therefore, it will have to be called an industry under the Industrial Disputes Act.

We do not think that such a sweeping test was contemplated by the Industrial Disputes Act, nor do we think that every organisation which does useful service and employs people can be labelled as industry. We, therefore, direct that the matter be placed before the Hon'ble the chief justice of India to consider whether a larger Bench should be constituted to re-consider the decision of this Court in Bangalore Water Supply and Sewerage Board's (supra).