Des Raj and Others

Vs

State of Punjab and Others

Civil Appeal Nos. 5415 of 1985 and 2168-69 of 1987

(Ranganath Misra, M.M. Dutt JJ)

20.04.1988

JUDGMENT

RANGANATH MISRA, J. –

1. Each of these appeals is by special leave and is directed against the award made in different disputes by the Labour Court. The common justification for ignoring the High Court and approaching this Court directly by way of special leave, according to Mr. Jitendra Sharma for each of the appellants, is that there are a couple of Full Bench decisions of the Punjab and Haryana High Court holding that the Irrigation Department of the State Government of Punjab is not an 'industry' and no useful purpose would have been served by routing the matters through the High Court as the Full Bench decision would have been followed.

2. The appellant in Civil Appeal No. 5415 of 1985 was a foreman in the Mechanical Construction Division under the Irrigation Department and had applied under Section 33-C-2 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') before the Labour Court for recovery of arrears of annual increments.

3. The appellant in Civil Appeal No. 2168 of 1987 was a T. Mate in the PWD Drainage Division. When his services were terminated without complying with the requirements of the law, he challenged the termination before the Labour Court. The appellant in the remaining appeal was an Operator in the Mechanical Division, Rohtak under the Irrigation Department of Haryana State. His services were terminated and thereupon he approached the Labour Court disputing the validity of the said order. In each of these cases challenge was advanced by the governmental authority to the maintainability of the application before the Labour Court on the ground that the employer was not an 'industry' and the Act did not apply. The Labour Court by different orders made in each of these cases upheld the objection and declined relief to the employees. The common question in these appeals, therefore, is as to whether the Irrigation Department of either government is an 'industry'.

4. The definition of 'industry' occurring in Section 2 of the Act has now to be seen. The Act defines 'industry' in Section 2(j) to mean :

> any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

By Section 2(c) of the Amending Act (46 of 1982), this definition has been amended but the amendment has not yet been brought into force. The amended definition of "industry" is as follows :

Industry means any systematic activity carried on by cooperation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not, -

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit,

and includes -

(a) any activity of the Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948;

(b) any activity relating to the promotion of sales or business or both carried on by an establishment,

but does not include -

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation. - For the purposes of this sub-clause, 'agricultural operation' does not include any activity carried on in a plantation as defined in clause (f) of Section 2 the Plantations Labour Act, 1951; or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or

> any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten;
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> Since the amended statutory definition is not yet in force, the parent definition and judicial pronouncements have to be referred to for finding the law. The field is covered by pronouncements of this Court and it is not necessary to go beyond these precedents. In case the Irrigation Department is accepted to be "industry", there is no dispute that each of the appellants would be a "workman" and each of the claims would constitute an "industrial dispute" as defined in Section 2(s) and (k) respectively.

5. A five Judge Bench in D. N. Banerji v. P. R. Mukherjee (1953 SCR 302 : AIR 1953 SC 58 : (1953) 1 Lab LJ 195) considered the scope of the definition of industry. Chandrashekhara Aiyer, J. speaking for the Court stated :

> It is therefore incumbent on us to ascertain what the statute means by "industry" and "industrial dispute", leaving aside the original meaning attributed to the words in a simpler state of society, when we had only one employer perhaps, doing a particular trade or carrying on a particular business with the help of his own tools, material and skill and employing a few workmen in the process of production or manufacture, and when such disputes that occurred did not go behind individual levels into acute fights between rival organisations of workmen and employers, and when large scale strikes and lock-outs throwing society into chaos and confusion were practically unknown. Legislation had to keep pace with the march of times and to provide for new situations. Social evolution is a process of constant growth, and the State cannot afford to stand still without taking adequate measures by means of legislation to solve large and momentous problems that arise in the industrial field from day to day almost....

When our Act came to be passed, labour disputes had already assumed big proportions, and there were clashes between workmen and employers in several instances. We can assume therefore that it was to meet such a situation that the Act was enacted, and it is consequently necessary to give the terms employed in the Act referring to such disputes as wide an import as reasonably possible. Do the definitions of "industry", "industrial dispute" and "workman" take in the extended significance or exclude it ? Though the word "undertaking" in the definition of "industry" is wedged in between business and trade on the one hand and manufacture on the other, and though therefore it might mean only a business or trade undertaking, still it must be remembered that if that were so, there was no need to use the word separately from business or trade. The wider import is attracted even more clearly when we look at the latter part of the definition which refers to "calling, service, employment or industrial occupation, or avocation of workmen". "Undertaking" in the first part of the definition and "industrial occupation or avocation" in the second part obviously mean much more than what is ordinarily understood by trade or business. The definition was apparently intended to include within its scope what might not strictly be called a trade or business venture.

The ratio in Mukherjee case (1953 SCR 302 : AIR 1953 SC 58 : (1953) 1 Lab LJ 195) was relied upon by a three Judge Bench in State of Bombay v. Hospital Mazdoor Sabha ((1960) 2 SCR 866 : AIR 1960 SC 610 : (1960) 1 Lab LJ 251) and Gajendragadkar, J. who spoke for the Bench observed :

> There is another point which cannot be ignored. Section 2(i) does not define "industry" in the usual manner by prescribing what it means : the first clause of the definition gives the statutory meaning of "industry" and the second clause deliberately refers to several other items of industry and brings them in the definition in an inclusive way. It is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense.... Where we are dealing with an inclusive definition it would be inappropriate to put a restrictive interpretation upon terms of wider denotation.

Besides, it would be relevant to point out that too much reliance cannot be placed on what are described as the essential attributes or features of trade or business as conventionally understood. The conventional meaning attributed to the words "trade and business" has lost some of its validity for the purpose of industrial adjudication. Industrial adjudication has necessarily to be aware of the current of socio-economic thought around; it must recognise that in the modern welfare State healthy industrial relations are a matter of paramount importance and its essential function is to assist the State by helping a solution of industrial disputes which constitute a distinct and persistent phenomenon of modern industrialised States. In attempting to slove indutrial disputes industrial adjudication does not and should not adopt a doctrinaire approach. It must evolve some working principles and should generally avoid formulating or adopting abstract generalisation. Nevertheless it cannot harp back to old age notions about the relations between employer and the employee or to the doctrine of laissez faire which then governed the regulation of the said relations. That is why, we think, in construing the wide words used in Section 2(i) it would be erroneous to attach undue importance to the attributes associated with business or trade in the popular mind in days gone by.

The Bench thereafter adverted to the negative side and stated :

> It would be possible to exclude some activities from Section 2(j) without any difficulty. Negatively stated the activities of the government which can be properly described as regal or sovereign activities are outside the scope of Section 2(j). These are functions which a constitutional government can and must undertake for governance and which no private citizen can undertake. This position is not in dispute. An attempt is, however, made by the appellant to suggest that in view of the Directive Principles enunciated in Part IV of the Constitution and in view of the ideal of a welfare State which has been placed before the country, governments, both at the level of States as well as at the Centre, undertake several welfare activities; and the argument is that the field of governmental or regal activities which are excluded from the operation of Section 2(j) should be extended to cover other activities undertaken by the governments in pursuit of their welfare policies. In our opinion, this contention cannot be accepted. The activities which do not fall within Section 2(j) and which are described as governmental or regal or sovereign have been pithily described by Lord Watson as "the primary and inalienable functions of a constitutional government... "; and it is only these activities that are outside the scope of Section 2(j). It sounds incongruous and self-contradictory to suggest that activities undertaken by the government in the interests of socio-economic progress of the country as beneficial measures should be exempted from the operation of the Act which in substance is a very important beneficial measure itself.

Applying the stated principles, this Court in that case held that the J. J. Croup of Hospitals came within the definition of industry.

6. Within a couple of weeks from the Hospital Mazdoor Sabha case ((1960) 2 SCR 866 : AIR 1960 SC 610 : (1960) 1 Lab LJ 251), the same Bench in the case of Corporation of the City of Nagpur v. Employees ((1960) 2 SCR 942 : AIR 1960 SC 675 : (1960) 1 Lab LJ 523), this time Subba Rao, J., as he then was, speaking for the court examined the selfsame question. Before the court were available two precedents - Mukherjee case (1953 SCR 302 : AIR 1953 SC 58 : (1953) 1 Lab LJ 195) and Hospital Mazdoor Sabha case ((1960) 2 SCR 866 : AIR 1960 SC 610 : (1960) 1 Lab LJ 251) and it was stated :

> Before considering the positive aspects of the definition, what is not an industry may be considered. However wide the definition of "industry" may be, it cannot include the regal or sovereign functions of State. This is the agreed basis of the arguments at the bar, though the learned counsel differed on the ambit of such functions. While the learned counsel for the Corporation would like to enlarge the scope of these functions so as to comprehend all the welfare activities of a modern State, the learned counsel for the respondents would seek to confine them to what are aptly termed "the primary and inalienable functions of a constitutional government."

The court analysed the activities of the various departments of the Corporation and observed :

> We can also visualize different situations. A particular activity of a municipality may be covered by the definition of "industry". If the financial and administrative departments are solely in charge of that activity, there can be no difficulty in treating those two departments also as part of the industry. But there may be cases where the said two departments may not only be in charge of a particular activity or service covered by the definition of "industry" but also in charge of other activity or activities falling outside the definition of "industry". In such cases a working rule may be evolved to advance social justice consistent with the principles of equity. In such cases the solution to the problem depends upon the answer to the question whether such a department is primarily and predominantly concerned with industrial activity or incidentally connected therewith.

The result of the discussion may be summarised thus : (1) The definition of "industry" in the Act is very comprehensive. It is in two parts : one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act. (2) The history of industrial disputes and the legislation recognises the basic concept that the activity shall be an organised one and not that which pertains to private or personal employment. (3) The regal functions prescribed as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and the other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act.

Applying these tests, this Court examined as to whether the various departments of the Corporation came within the definition or not. Then came the decision of a Constitution Bench in the case of

Management of Safdarjung Hospital v. Kuldip Singh Sethi ((1971) 1 SCR 177 : (1970) 1 SCC 735 : AIR 1970 SC 1470 : (1970) 2 Lab LJ 266) where Chief Justice Hidayatullah spoke for the court. Referring to the definition of industry, the learned Chief Justice observed : (SCC p. 741, para 9 and p. 742, para 15)

This definition is in two parts. The first part says that it means any business, trade, undertaking, manufacture or calling of employers and then goes on to say that it includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.....

> Therefore, an industry is to be found when the employers are carrying on any business, trade, undertaking, manufacture or calling of employers. If they are not, there is no industry as such. What is meant by these expressions was discussed in a large number of cases which have been considered elaborately in the Gymkhana Club case (Secretary, Madras Gymkhana Club Employees' Union v. Management of the Gymkhana Club, (1968) 1 SCR 742 : AIR 1968 SC 554 : (1967) 2 Lab LJ 720). The conclusion is that case may be stated :
>
> Primarily, therefore, industrial disputes occur when operation undertaken rests upon cooperation between employers and employees with a view to production and distribution of material goods, in other words, wealth, but they may arise also in cases where the cooperation is to produce material services. The normal case are those in which the production or distribution is of material goods or wealth and they will fall within the expressions trade, business and manufacture.

In Safdarjung hospital case ((1971) 1 SCR 177 : (1970) 1 SCC 735 : AIR 1970 SC 1407 : (1970) 2 Lab LJ 266) the decision in Hospital Mazdoor Sabha case ((1960) 2 SCR 866 : AIR 1960 SC 610 : (1960) 1 Lab LJ 251) was analysed and the court came to the following conclusion : (SCC p. 745, para 25)

> In our judgment the Hospital Mazdoor Sabha case ((1960) 2 SCR 866 : AIR 1960 SC 610 : (1960) 1 Lab LJ 251) took the extreme view of the matter which was not justified.

Then came the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa ((1978) 2 SCC 213 : 1978 SCC (L&S) 215). This time the same point was before a seven Judge Bench of this Court. This judgment undertook a review of the entire law. Krishna Iyer, J. spoke for himself, Bhagwati and Desai, JJ. In paragraph 139 of the judgment it was stated : [SCC pp. 282-84 : SCC (L&S) pp. 284-86, paras 139-43]

> Banerjee (1953 SCR 302 : AIR 1953 SC 58 : (1953) 1 Lab LJ 195), amplified by Corporation of Nagpur ((1960) 2 SCR 942 : AIR 1960 SC 675 :(1960) 1 Lab LJ 523), in effect met with its Waterloo in Safdarjung ((1971) 1 SCR 177 : (1970) 1 SCC 735 : AIR 1970 SC 1407 : (1970) 2 Lab LJ 266). But in this latter case two voices could be heard and subsequent rulings zigzagged and conflicted precisely because of this built-in ambivalence. It behoves us, therefore, hopefully to abolish blurred edges, illumine penumbral areas and overrule what we regard as wrong. Hesistancy, halftones and hunting with the hounds and running with the hare can claim heavy penalty in the shape of industrial confusion, adjudicatory quandary and administrative perplexity at a time when the nation is striving to promote

employment through diverse strategies which need, for their smooth fulfilment, less stress and distress, more mutual understanding and trust based on a dynamic rule of law which speaks clearly, firmly and humanely. If the salt of law lose its savour of progressive certainty wherewith shall it be salted ? So we proceed to formulate the principles, deducible from our discussion, which are decisive, positively and negatively, of the identity of "industry" under the Act. We speak, not exhaustively, but to the extent covered by the debate at the bar and, to that extent, authoritatively, until overruled by a larger Bench or superseded by the legislative branch.

I

"Industry" as defined in Section 2(j) and explained in Banerjee (1953 SCR 302 :AIR 1953 SC 58 : (1953) 1 Lab LJ 195) has a wide import.

(a) Where (i) systematic activity, (ii) organised by cooperation 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 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 tests is the nature of the activity with special emphasis on the employer-employee relations.

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

II

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 as explained in Banerjee (1953 SCR 302 : AIR 1953 SC 58 : (1953) 1 Lab LJ 195) and in this judgment; so also, service, calling and the like. This yields the inference that all organized activities possessing the triple elements 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" undertakings, callings and services, adventures 'analogous to the carrying on the trade or 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 analogy.

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) cooperatives, (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, cooperatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantial 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.

(c) 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 or cause such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a 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 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 which quality for exemption, other not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi v. Ram Nath ((1964) 2 SCR 703 : AIR 1963 SC 1873 : (1963) 2 Lab LJ 335) 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 ((1960) 2 SCR 942 : AIR 1960 SC 675 : (1960) 1 Lab LJ 523), 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 Section 2(j).

(d) Constitutional and competently enacted legislative provision may well remove

from the scope of the Act categories which otherwise may be covered thereby.

7. Beg, C.J., wrote a separate judgment and prefaced it by saying : [SCC p. 284 : SCC (L&S) p. 286, para 146]

I am in general agreement with the line of thinking adopted and the conclusions reached by my learned brother Krishna Iyer.

In paragraph 149 of the judgment, the learned Chief Justice observed : [SCC p. 285 : SCC (L&S) p. 287, para 149]

In his heroic efforts, my learned brother Krishna Iyer, if I may say so with great respect, has not discarded the tests of industry formulated in the past. Indeed, he has actually restored the tests laid down by this Court in D. N. Banerjee case (1953 SCR 302 : AIR 1953 SC 58 : (1953) 1 Lab LJ 195), and, after that in Corporation of the City of Nagpur v. Its Employees ((1960) 2 SCR 942 : AIR 1960 SC 675 : (1960) 1 Lab LJ 523), and State of Bombay v. Hospital Mazdoor Sabha ((1960) 2 SCR 866 : AIR 1960 SC 610 : (1960) 1 Lab LJ 251) to their pristine glory.

The learned Chief Justice again stated : [SCC pp. 286-87 : SCC (L&S) pp. 288-89, paras 150-51]

> Each of us is likely to have a subjective notion about "industry" For objectivity, we have to look first to the words used in the statutory provision defining industry in an attempt to find the meaning. If that meaning is clear, we need, proceed no further. But, the trouble here is that the words found there do not yield a meaning so readily. They refer to what employers or workers may do as parts of their ordinary avocation or business in life.....

Thus, in order to draw the "circle of industry", to use the expression of my learned brother Iyer, we do not find even the term "workman" illuminating. The definition only enables us to see that certain classes of persons employed in the service of the State are excluded from the purview of industrial dispute which the Act seeks to provide for in the interests of industrial peace and harmony between the employers and employees so that the welfare of the nation is secured. The result is that we have then to turn to the preamble to find the object of the Act itself, to the legislative history of the Act, and to the socio-economic ethos and aspirations and needs of the times in which the Act was passed.

After quoting the definition of industry, the learned Chief Justice proceeded to say in paragraph 158 of the judgment : [SCC p. 289 : SCC (L&S) p. 291, para 158]

> It seems to me that the definition was not meant to provide more than a guide. It raises doubts as to what could be meant by the "calling of employers" even if business, trade, undertaking or manufacture could be found capable of being more clearly delineated. It is clear that there is no mention here of any profit motive. Obviously, the word "manufacture" of employers could not be interpreted literally. It merely means a process of manufacture in which the employers may be engaged. It is, however, evident that the term "employer" necessarily postulates employees without whom there can be no employers.

In paragraph 165 of the judgment, the learned Chief Justice added : [SCC pp. 291-92 : SCC (L&S) pp. 293-94, para 165]

I have contented myself with a very brief and hurried outline of my line of thinking partly because I am in agreement with the conclusions of my learned brother Krishna Iyer and I also endorse his reasoning almost wholly, but even more because the opinion I have dictated just now must be given today if I have to deliver it at all. From tomorrow I cease to have any authority as a Judge to deliver it. Therefore, I have really no time to discuss the large number of cases cited before us, including those what are known as "sovereign" functions.

Chandrachud, J., as he then was, on behalf of himself, Jaswant Singh and Tulzapurkar, JJ. added a note by saying : [SCC p. 293 : SCC (L&S) p. 295, para 170]

We are in respectful agreement with the view expressed by Krishna Iyer, J.... that the appeal should be dismissed. We will give our reasons later indicating the area of concurrence and divergence, if any, on the various points in controversy on which our learned brother has dwelt.

On April 7, the reasonings were delivered by Chief Justice Chandrachud for himself as by then Jaswant Singh, J. delivered a separate set of reasonings for himself and Tulzapurkar, J. The learned Chief Justice (because by then he had assumed that office) referred to several authorities and tests and in paragraph 181 of the judgment stated : [SCC p. 298 : SCC (L&S) p. 300, para 181]

These refinements are, with respect, not warranted by the words of the definition, apart from the consideration that in practice they make the application of the definition to concrete cases dependent upon a factual assessment so highly subjective as to lead to confusion and uncertainty in the understanding of the true legal position. Granting that the language of the definition is so wide that some limitation ought to be read into it, one must step at a point beyond which the definition will skid into a domain too rarefied to be realistic. Whether the cooperation between the employer and the employee is the proximate cause of the ultimate product and bears direct nexus with it is a test which is almost impossible of application with any degree of assurance or certitude. It will be as much true to say that the solicitor's assistant, managing clerk, librarian and the typist do not directly contribute to the intellectual end product which is a creation of his personal professional skill as that, without their active assistance and cooperation it will be impossible for him to function effectively. The unhappy state of affairs in which the law is marooned will continue to baffle the skilled professional and his employees alike as also the judge who has to perform the unenviable task of sitting in judgment over the directness of the cooperation between the employer and the employee, until such time as the legislature decides to manifest its intention by the use of clear and indubious language. Besides the fact that this Court has so held in National Union of Commercial Employees v. M. R. Meher, Industrial Tribunal, Bombay (1962 Supp 3 SCR 157 : AIR 1962 SC 1080 : (1962) 1 Lab LJ 241) the legislature will find a plausible case for exempting the learned and liberal professions of lawyers, solicitors, doctors, engineers, chartered accountants and the like from the operation of industrial laws. But until that happens, I consider that in the present state of the law it is difficult by judicial interpretation to create exemptions in favour of any particular class.

The remaining two learned Judges added their separate opinion and in the concluding part stated : [SCC p. 300 : SCC (L&S) p. 302, para 187]

In view of the difficulty experienced by all of us in defining the true denotation of the term "industry" and divergence of opinion in regard thereto - as has been the case with this Bench also - we think, it is high time that the legislature steps in with a comprehensive bill to clear up the fog and remove the doubts and set at rest once for all the controversy which crops up from time to time in relation to the meaning of the aforesaid term rendering it necessary for larger Benches of this

Court to be constituted which are driven to the necessity of evolving a working formula to cover particular cases.

The ultimate position available from the seven Judge Bench decision, therefore, is that while three learned Judges delivered their view through Krishna Iyer, J., Beg, C.J. spoke somewhat differently, yet agreed with the conclusion reached by Krishna Iyer, J., Chandrachud, C.J. also agreed with the majority while the remaining two learned Judges looked for legislative clarification to meet the situation.

8. Perhaps keeping in view the observations of the learned Judges constituting the seven Judge Bench, the definition of industry as occurring in Section 2(j) of the Act was amended by Act 46 of 1982. Though almost six years have elapsed since the amendment came on to the Statute Book, it has not been enforced yet. Bare Acts and commentaries on the Industrial Disputes Act have, however, brought in the new definition by deleting the old one with a note that the new provision has yet to come into force. This situation has further added to the confusion.

9. It is now time to turn to the facts of the case. Judicial notice can be taken of the position that Haryana and Punjab originally constituted one State and Haryana has become separate from 1966. The Irrigation Department of the erstwhile Punjab Stated was discharging the State's obligations created under the Northern India Canal and Drainage Act, 1873. The Administration Report of the year 1981-82 of the Public Works Department, Irrigation Branch, while really deals with the irrigation department has been produced before us with notice thereof to the appellant's learned counsel. We may extract a part of the report :

> The Irrigation Department which was set up more than 100 years ago is mainly responsible to provide water supplies for the subsistence and development of agriculture in the 30.36 hectare cultivable area of the State covered by canal command. This requires harnessing of the surface and ground water resources of the State and their equitable distribution to the beneficiaries, within Canal Comman area. This task involves construction of multipurposes, major, medium and minor irrigation projects, maintenance of network of channels, regulation of canal supplies, enforcement of water laws etc. and levying of crop-wise water supply rates on the irrigators for recovery through the State Revenue Department. Extension, improvement and modernisation of the age old canal system is also continued to be done simultaneously by the Department. Besides the irrigation the department also provides water for drinking purposes to village and towns in the State. The canal water supplies are also being made available for the industrial development in areas where no other source for water supplies exists.

The State of Punjab was reorganised in the year 1966 and a number of disputes on the sharing of water/powers with successor State cropped up. The issues regarding apportionment of Ravi Beas waters over the preparation uses falling to the share of erstwhile Punjab, apportionment of rights and liabilities of Bhakra Nangal Project, retention of control of Irrigation Head Works of Harike, Ropar and Ferozepur by Punjab, restoration of Bhakra Nangal Project and Beas Project to Punjab etc., etc. are also dealt with by the Department.

The Irrigation Department is also responsible to provide protection to the valuable irrigated lands and public property from flooding, river action and waterlogging. This requires construction of flood protection, river training, drainage and anti-waterlogging works and their maintenance.

The Department has also to plan ahead for irrigation development in the State for which purpose proposal of irrigation schemes are investigated, surveyed and prepared in advance. Feasibility of irrigation schemes for hydropower generation from the existing and proposed irrigation schemes is also investigated by the Department and their execution undertaken. The execution of new irrigation schemes, extension and improvement of existing schemes requires preparation of detailed designs of channels and their necessary works. This work is also done by the Department.

During designs, execution and maintenance of the irrigation, flood control and drainage projects, field problems arise for the solution of which research, model studies and laboratory experiments have to be conducted. The Department undertakes this work as well.

Having shared with the neighbouring States almost entire water resources of the rivers flowing through the Punjab water has now become a constraint to keep the tempo of the development of irrigated agriculture in the State. For this purpose it has not only become necessary to evaluate the total water resources of the State but also plan conjunctive use of surface and ground water for the optimum development of this precious resource. Further it has become necessary to conserve irrigation supplies and propagate their use economically through innovative water distribution system like sprinklers, drip system, etc.

The Irrigation Department plans and executes reclamation of salt or thur affected areas within canal command. Measurements of discharges in the Ravi, the Beas and the Sutlej besides the beings (sic) and drains in the State is also carried out by the Irrigation Department. These observations which are being made for the last over 60 years have provided basic data to the design of multipurposes Bhakra Nangal, Beas and Beas-Sutlej Link project which have transformed economies not only of the State of Punjab but also of the State of Haryana and Rajasthan.

The facts extracted from the report apparently give a picture of the activities of the Irrigation Department. There is a Full Bench judgment of the Punjab and Haryana High Court in the case of Om Prakash v. Executive Engineer, SYL, Kurukshetra (1984 Cur LJ 349) where the question that came up for consideration before the Full Bench was thus stated; whether the irrigation department of the State (of Punjab) comes within the ambit of industry in Section 2(j) of the Industrial Disputes Act, 1947 ? The court took into account the judgment of another Full Bench decision of the same court in the case of State of Punjab v. Kuldip Singh ((1983) 1 Lab LJ 309) where the question for consideration was whether the Public Works Department of the State Government was an industry, In Om Prakash case (1984 Cur LJ 349), the Full Bench barely took note of the decision of this Court in Bangalore Water Supply case ((1978) 2 SCC 213 : 1978 SCC (L&S) 215) but did not deal with it. It also took into account the position of the Irrigation Department in Punjab Keeping in the background the provisions of the Northern India Canal and Drainage Act of 1873 and stated :

The Irrigation Department is a branch of the Public Works Department. It provides a reasonably assured source of water for crops through the network of canals. The Irrigation Department also carries out schemes and takes measures for protecting crops from the menace of floods during the times of abnormal rainfall. In the olden times when there were no canals. agriculture was very limited and cultivators depended solely on rainfall. By the passage of time it was thought necessary to build irrigation and drainage works for the purpose of providing better water facilities to the farmers on whom depends the economy of this country. These works could only be built by the government.

The western Jamuna canal which serves the State of Haryana was the first major irrigation work

which was initially constructed by Feroze Shah Tuglaq in 1351. It was reconditioned by Akbar in 1568 and was extended in 1626 in the reign of Shahajahan. The canal was constructed in a reasonably serviceable form by the British during 1817-1823. Then the Upper Bari Doab canal, Sirhind canal, Lower Chanab canal and Lower Jhelum canal etc., were constructed. Thereafter, many other projects have come up and the ones which need mention are Bhakra Nangal project with its network of Bhakra system and the Beas project. All these projects have been carried out by the State at the State expense. It is understandable that such projects could not at all be undertaken by private entrepreneurs or could be left in their hands for execution. Further, water is a State subject as per entry 17 in List II of Seventh Schedule of the Constitution. Even before coming into force of the Constitution, water of rivers and streams was considered to be belonging to the State..... Thus it would be evident that the water has at all times been a State subject and the State can exercise full executive powers in all matters connected with the water. The State supplies water to the farmers through the network of canals. It is correct that water rates are realised from the farmers but they are not realised for the cost of the water. In other words, the State does not sell water to the farmers. As contended justifiably by the learned Advocate General, the water charges are not even sufficient to meet the establishment and maintenance expenses of the department. Moreover, the water rates have never been realised on the basis of the quantity of the water supplied. These rates are dependent upon the class of crops raised by the farmers and have been fixed in terms of per acre. It may be noted that rates for crops, such as wheat, sugarcane, cotton, rice are higher than the other crops such as gram, oil seeds, bajra and maize etc. In other words, the water charges have been linked on the principle of bearability, that is, paying capacity of the farmer dependent upon his income from the kind of crop raised by him. The water is supplied on the basis of the holding of each farmer in terms of cultivable commanded area, that is, on the basis of uniform and equitable yardstick. Again, the water charges are remitted when the crops are damaged by natural calamities such as locust, hailstorms, floods or drought etc. Further, the construction of canals, dams, barrages, and other projects cannot be entrusted to some private hands. The construction of these works involves compulsory acquisition of land which can also be done by the State. Merely this fact that water is supplied by charging certain rates cannot warrant a finding that the State is indulging in trade or business activity or an activity which is analogous to trade, business or economic venture. From what has been stated above, there can be no gainsaying that the functions of the irrigation department cannot at all be left to private enterprise. The facts which weighed in holding that the construction and maintenance of national and state highways by the State does not come within the ambit of industry in Kuldip Singh case ((1983) 1 Lab LJ 309) are present so far as the irrigation department is concerned..... In this view of the matter, I hold that the functions of the Irrigation Department are essentially government functions and that these functions neither partakes of the nature of trade and business nor are even remotely analogous thereto and that this department does not come within the ambit of industry as defined in Section 2(j) of the Act.

10. Mr. Sharma for the appellants placed before us some cases of different High Courts in support of his stand that the Irrigation Department should be considered as industry. The first of these cases is that of Madhya Pradesh Irrigation Karamchari Sangh v. State of Madhya Pradesh ((1972) 1 Lab LJ 374) where the Madhya Pradesh High Court found the Chambal Hydel Irrigation Project to be an industry. The facts of that case reveal that the project therein was a multi-purpose one which was used for generating electricity as also for irrigation purposes. On the facts found therein, the High Court came to the conclusion that it came within the definition under Section 2(j) of the Act.

11. In State of Rajasthan v. Industrial Tribunal, Rajasthan (1970 Raj LW 137) the question for consideration before the Rajasthan High Court was whether the Survey and Investigation Division of Irrigation Department was an industry. In paragraph 26, the learned Judge came to the conclusion

by saying :

> In view of the aforesaid decisions of the Supreme Court, I find it difficult to hold that the activities of the State Government by organising its Survey and Investigation Division in the Irrigation Department through which the State Government rendered services in the matter of supplying water by constructing canals and dams does not fall within the ambit of the sovereign or regal functions of the State. Such service to the people at large, in my opinion, comes within the ambit of the expression industry as defined in Section 2(j) of the Act.

The finding runs contrary to the conclusion. If in the opinion of the learned Judge, it was difficult to hold that the activities did not fall within the ambit of the sovereign or regal functions, then the conclusion should have been different.

12. In Dinesh Sharma v. State of Bihar (1983 Bih LJR 207), 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 ((1978) 2 SCC 213 : 1978 SCC (L&S) 215) and the Nagpur Corporation case ((1960) 2 SCR 942 : AIR 1960 SC 675 : (1960) 1 Lab LJ 523) and it was held that the said department of the State Government of Bihar was an industry. In Chief Engineer, Irrigation, Orissa v. Harihar Patra (1977 Lab IC 1033) a Division Bench of the Orissa High Court was considering whether the Salandi Irrigation Project in that State was an industry. The High Court relied upon the earlier Full Bench decision of its own court and some of the decisions of this Court which we have referred to above, and came to hold that the irrigation project was an industry.

13. 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 were 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 Section 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 filed is cleared up.

14. For the reasons we have indicated above, these appeals succeed. We make it clear that in the event of the definition of industry being changed either by enforcement of the new definition of industry or by any other legislative change, it would always be open to the aggrieved Irrigation Department to raise the issue again and the present decision would not stand in the way of such an attempt in view of the altered situation. The appeals are allowed without costs.

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