Physical Research Laboratory

Vs

K. G. Sharma

Civil Appeal No. 2663 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

08.04.1997

JUDGMENT

NANAVATI, J. –

1. Leave granted.

2. 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.

3. The facts and circumstances which gave rise to this question are as follows. The respondent was appointed by PRL as Scientific Glass Blower on 25-10-1948. He continued to work as such till 11-5-1976 when he was transferred to Photography Documentation Services on a post which was non-technical and administrative. On 31-12-1978 he attained the age of 58 years. He was, therefore, retired from service with effect from 1-1-1979. 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by his retirement at the age of 58 years and not at 60 he filed a writ petition in the High Court of Gujarat but it was withdrawn. He then filed a complaint before the Labour Commissioner who, on the basis thereof, made a reference to the Labour Court at Ahmedabad.

4. The Labour Court rejected the contention of the appellant that is 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 goods or services yet it took the aforesaid view following the decision of this Court in Bangalore Water Supply & Sewerage Board v. A. Rajappa [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] as it further found that PRL is carrying on, in an organised and systematic manner, the activity of research in its laboratory by active cooperation between itself and its employees and the discoveries and inventions 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 v. A. N. Ram [SCA 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 [(1978) 2 SCC 213 : 1978 SCC (L&S) 215], 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.

5. The appellant has approached this Court directly against the award of the Labour Court as the Gujarat High Court has already taken the view that PRL is an "industry" and different High Courts 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 1-2-1993, 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.

6. 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 by Dr. Vikram Sarabhai for research in space and allied sciences. 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 Education Society. It is virtually an institute falling under Government of India's Department of Space. Its object is to conduct research and is, therefore, engaged in conducting advance research in (1) astronomy and astrophysics, (2) planetary atmosphere and aeronomy, (3) earth sciences 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 or indirectly carrying on any trade or business and its activities do not result a 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 submitted that the research work carried on by the PRL is more in the nature of government or sovereign function than a commercial venture and, therefore, also it would not fall within the purview of Section 2(j) of the I.D. Act.

7. The question : What is an "industry" under the Industrial Disputes Act ? has been answered by this Court in Bangalore Water Supply case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] as under : (SCC pp. 282-84, paras 140-43)

> "I
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> 140. 'Industry', as defined in Section 2(j) and explained in Banerji [D. N. Banerji v. P. R. Mukherjee, 1953 SCR 302 : AIR 1953 SC 58 : (1953) 1 LLJ 195] has a wide import.

(a) Where (i) systematic activity, (ii) organized 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 test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease 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 as explained in Banerji [D. N. Banerji v. P. R. Mukherjee, 1953 SCR 302 : AIR 1953 SC 58 : (1953) 1 LLJ 195] and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity 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

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 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, cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, cooperative and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, 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-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

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 [University of Delhi v. Ram Nath, (1964) 2 SCR 703 : AIR 1963 SC 1873 : (1963) 2 LLJ 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 Corpn. of Nagpur [Corpn. of the City of Nagpur v. Employees, (1960) 2 SCR 942 : AIR 1960 SC 675 : (1960) 1 LLJ 523], will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may be 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 provisions may well remove from the scope of Act categories which otherwise may be covered thereby."

8. 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" vague and "rather clumsy, vaporous and tall-and-dwarf". Therefore, while interpreting the words "underrating", "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 or business. Furthermore, an activity undertaken by the Government cannot be regarded as "industry" if it is done in discharge of its sovereign functions. 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 functions or as regards the other aspects dealt with by the court.

9. In this context, it is useful to refer to Chief Conservator of Forests v. Jagannath Maruti Kondhare [(1996) 2 SCC 293 : 1996 SCC (L&S) 500] 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 taking of such a view would erode the ratio in Bangalore Water Supply case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215], observed that "the dichotomy of sovereign and non-sovereign functions does not really exist - it would all depend on the nature of the power and manner of its exercise". After referring to the three traditional sovereign functions namely legislative power, the administration of laws and the exercise of the judicial power and also the decision of the Gujarat High Court in J. J. Shrimali v. District Development Officer [(1989) 1 Guj LR 396] wherein famine and drought-relief works undertaken by the State Government were held not to be an "industry", this Court observed that : "What really follows from this judgment is that apart from the aforesaid three functions, there may be some other functions also regarding which a view could be taken that the same too is a sovereign function."

10. In Sub-Divisional Inspector of Post v. Theyyam Joseph [(1996) 8 SCC 489 : 1996 SCC (L&S) 1012] this Court had to consider whether the establishment of Sub-Divisional Inspector of Post at Vaikam is an "industry". Therein this Court has observed that : (SCC pp. 491-92, para 6)

> "... 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 functions 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 service, the scale of pay and the conduct rules regulating the service conditions of the Extra-Departmental Agents employed by the 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 [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] to determine what can be regarded as sovereign functions, the change in the concept of sovereign functions of a constitutional government has to be kept in mind. Relying upon these two in Chief Conservator of Forests v. Jagannath Maruti Kondhare [(1996) 2 SCC 293 : 1996 SCC (L&S) 500] and Sub-Divisional Inspector of Post v. Theyyam Joseph [(1996) 8 SCC 489 : 1996 SCC (L&S) 1012], it was contended by the learned Attorney General that the research work carried on by PRL should be regarded as a sovereign or government function.

11. With respect to research institutes this Court in Bangalore Water Supply [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] has observed as under : (SCC pp. 271-72, para 113)

> "Does research involve collaboration between employer and employee ? It does. The employer is the institution, the employees 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 nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and 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. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; 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 itself, it can be regarded as an organisation, propelled by systematic activity, modelled on cooperation between employer and employee and calculated to throw up discoveries 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."

12. PRL is an institution under the Government of India's Department of Space. It is engaged in pure research in space science. What is the nature of its 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 those engaged in such 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 except in an indirect manner.

13. It is nobody's case 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, can it 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 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.

14. 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.