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Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and ors.

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Court : Supreme Court of India

Decided On : Feb-21-1978

Reported in : AIR1978SC548; [1978(36)FLR266]; (1978)ILLJ349SC; (1978)IILLJ73SC; (1978)2SCC213; [1978]3SCR207; 1978LabIC467(SC)

Judge : M.H. Beg, C.J.,; Y.V. Chandrachud,; P.N. Bhagwati,; V.R. Krishna Iyer,; Jaswan

Acts : Industrial Disputes Act, 1947 - Sections 2

Appeal No. : Civil Appeal Nos. 1555, 2119 and 2151 of 1970, 1171 of 1972, 753-754 and 1544-1545x of 1975, 898 of

Appellant : Bangalore Water Supply and Sewerage Board

Respondent : A. Rajappa and ors.

Advocate for Def. : M.K. Ramamurthi, ; M.C. Narasimha, ; N.Nettar and ;

Advocate for Pet/Ap. : S.V. Gupte, Att. Genl.; S.V. Subrahmanyam,; M.Veerappa and;

Prior history : From the Judgment and Order dated July 5, 1974 of the Karnataka High Court in Writ Petitions 868 and 2439 of 1973, From the Judgments and Order dated April 15, and June 11, of the Andhra Pradesh High Court in Writ Appeals 205 and 231 of 1975, From the Awa

Judgement :
ORDER

165. We are in respectful agreement with the view expressed by Krishna Iyer, J. in his critical judgment that the Bangalore Water Supply and Sewerage Board 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.

Chandrachud, C. J.

166. By a short order dated February 21, 1978, which I pronounced on behalf of myself and my learned Brethren Jaswant Singh and Tulzapurkar, I had expressed our agreement with the view taken by Brother Krishna Iyer on behalf of himself and three other learned Brethren that the Bangalore Water Supply & Sewerage Board's appeal be dismissed. I had stated that the area of concurrence or divergence with the rest of the judgment will, if necessary, be indicated later.

167. I have now the added advantage of knowing the divergent view expressed by Jaswant Singh and Tulzapurkar, JJ. on certain aspects of the matter. Almost every possible nuance of the question as to what is comprehended within 'Industry' and what ought to be excluded from the sweep of that expression has received consideration in the two judgments. Having given a further thought to the frustrating question as to what falls within and without the statutory concept of 'industry' I am unable to accept, respectfully, the basis on which Jaswant Singh and Tulzapurkar, JJ. have expressed their dissent.

168. Section 2(j) of the Industrial Disputes Act, 1947, defines 'industry' 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.

These are words of wide import, as wide as the legislature could have possibly made them. The first question which has engaged the attention of every court which is called upon to consider whether a particular activity is 'industry' is

whether, the definition should be permitted to have its full sway embracing within its wide sweep every activity which squarely falls within its terms or whether, some limitation ought not be read into the definition so as to restrict its scope as reasonably as one may, without doing violence to the supposed intention of the legislature. An attractive argument based on a well-known, principle of statutory interpretation is often advanced in support of the latter view. That principle is known as 'noscitur a sociis' by which is meant that associated words take their meaning from one another. That is to say, when two or more words which are susceptible of analogous meaning are coupled together, they take their colour from each other so that the width of the more general words may square with that of words of lesser generality. An argument based on this principle was rejected by Gajendragadkar, J., while speaking on behalf of the Court, in State of Bombay and Ors. v. The Hospital Mazdoor Sabha and Ors. : (1960)ILLJ251SC A group of five hospitals called the J. J. Hospital, Bombay, which is run and managed by the State Government in order to provide medical relief and to promote the health of the people was held in that case to be an industry.

169. The Court expressed its opinion in a characteristically clear tone by saying that if the object and scope of the Industrial Disputes Act are considered, there would be no difficulty in holding that the relevant words of wide import have been deliberately used by the legislature in defining 'industry' in Section 2(j) of the Act. The object of the Act, the Court said, was to make provision for the investigation and settlement of indsutrial disputes, and the extent and scope of its provisions would be realised if one were to bear in mind the definition of 'industrial dispute' given by Section 2(k), of 'wages' by Section 2(rr), 'workman' by Section 2(s), and of 'employer' by Section 2(g). The Court also thought that in deciding whether the State was running an industry, the definition of 'public utility service' prescribed by Section 2(n) was very significant and one had merely to glance at the six categories of public utility services mentioned therein to realise that in running the hospitals the State was running an industry. 'It is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j); who conducts the activity', said the Court, 'and whether it is conducted for profit or not do not make a material difference'.

170. But having thus expressed its opinion in a language which left no doubt as to its meaning, the Court went on to observe that though Section 2(j) used words of a very wide denotation, 'It is clear' that a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings from the scope of the definition. This was considered necessary because if all the words used in the definition were given their widest meaning, all services and all callings would come within the purview of the definition including services rendered by a person in a purely personal or domestic capacity or in a casual manner. The Court then undertook for examination what it euphemistically called 'a somewhat difficult' problem to decide and it proceeded to draw a line in order to ascertain what limitations could and should be reasonably implied in interpreting the wide words used in Section 2(j). I consider, with great respect, that the problem is far too policy-oriented to be satisfactorily settled by judicial decisions. The Parliament must step in and legislate in a manner which will leave no doubt as to its intention. That alone can afford a satisrfactory solution to the question which has agitated and perplexed the judiciary at all levels.

171. In the Hospital Mazdoor Sabha (supra) the Court rejected, on concession, two possible limitation on the meaning of 'industry' as defined in Section 2(j) of the Act : firstly, that no activity can be an industry, unless accompanied by a profit motive and secondly, that investment of capital is indispensible for treating an activity as an industry. The Court also rejected, on examination, the limitation that a quid pro quo for services rendered is necessary for bringing an activity within the terms of Section 2(j). If the absence of profit motive was immaterial, the activity, according to the Court, could not be excluded from Section 2(j) merely because the person responsible for the conduct of the activity accepted no return and was actuated by philanthropic or charitable motives. The Court ultimately drew a line at the point where the regal or sovereign activity of the Government is undertaken and held that such activities of the Government as have been pithily described by Lord Watson as 'the primary and inalienable functions of a constitutional Government', could be stated negatively as falling outside the scope of Section 2(j). The judgment concludes with the summing-up that, as a working principle, an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part

of such community with the help of employees is an undertaking within the meaning of Section 2(j); that such air activity generally involves the co-operation of the employer and the employees; that the activity must not be casual nor must it be for oneself nor for pleasure, but it must be organised or arranged in a manner in which trade or business is generally organised; and thus, the manner in which an activity is organised or arranged and the form and the effectiveness of the coopsration between the employer and employee for producing a desired result and for rendering of material services to the community become distinctive of activities falling within the terms of Section 2(j). Seeds of many a later judgment were sown by these limitations which were carved out by the Court in order to reduce the width of a definition which was earlier described as having been deliberately couched by the legislature in words of the widest amplitude.

172. These exceptions which the Court engrafted upon the definition of 'industry' in Section 2(j) in order to give to the definition the merit of reasonableness, became in course of time as many categories of activities exempted from the operation of the definition clause. To an extent, it seems to me clear that though the decision in Hospital Mazdoor Sabha (supra) that a Government run hospital was an industry proceeded upon the rejection of the test of 'noscitur a sociis', it is this very principle which constitutes the rationale of the exceptions carved out by the Court. It was said that the principle of 'noscitur a sociis' is applicable in cases of doubt and since the language of the definition admitted of no doubt, the principle had no application. But if the language was clear, the definition had to be given the meaning which the words convey and there can be no scope for seeking exceptions. The contradiction, with great respect, is that the Court rejected the test of 'association of words' while deciding whether the Government-run hospital is an industry but accepted that very test while indicating which categories of activities would fall outside the definition. The question then is : If there is no doubt either as to the meaning of the words used by the legislature in Section 2(j) or on the question that these are words of amplitude, what justification can one seek for diluting the concept of industry as envisaged by the legislature ?

173. On a careful consideration of the question I am of the opinion that Hospital Mazdoor Sabha was correctly decided in so far as it held that the J. J. group of

hospitals was an industry but, respectfully, the same cannot be said in regard to the view of the Court that certain activities ought to be treated as falling outside the definition clause.

174. One of the exceptions carved out by the Court is in favour of activities undertaken by the Government in the exercise of its inalienable functions under the Constitution, call it regal, sovereign or by any other name. I see no justification for excepting these categories of public utility activities from the definition of 'industry'. If it be true that one must have regard to the nature of the activity and not to who engages in it, it seems to me beside the point to enquire whether the activity is undertaken by the State, and further, if so, whether it is undertaken in fulfilment of the State's constitutional obligations or in discharge of its constitutional functions. In fact, to concede the benefit of an exception to the State's activities which are in the nature of sovereign functions is really to have regard not so much to the nature of the activity as to the consideration who engages in that activity; for, sovereign functions can only be discharged by the State and not by a private person. If the State's inalienable functions are excepted from the sweep of the definition contained in Section 2(j), one shall have unwittingly rejected the fundamental test that it is the nature of the activity which ought to determine whether the activity is an industry. Indeed, in this respect, it should make no difference whether, on the one hand, an activity is undertaken by a corporate body in the discharge of its statutory functions or, on the other, by the State itself in the exercise of its inalienable functions. If the water supply and sew erage schemes or fire fighting establishments run by a Municipality can be industries, so ought to be the manufacture of coins and currency, arms and ammunition and the winning of oil and uranium. The fact that these latter kinds of activities are, or can only be, undertaken by the State does not furnish any answer to the question whether these activities are industries. When undertaken by a private individual they are industries. Therefore, when undertaken by the State, they are industries. The nature of the activity is the determining factor and that does not change according to who undertakes it. Items 8, 11, 12, 17 and 18 of the First Schedule read with Section 2(n)(vi) of the Industrial Disputes Act render support to this view. These provisions which were described in Hospital Mazdoor Sabha as 'very significant' at least show that, conceivably, a Defence Establishment, a Mint or a Security Press

can be an industry even though these activities are, ought to be and can only be undertaken by the State in the discharge of its constitutional obligations or functions. The State does not trade when it prints a currency note or strikes a coin. And yet, considering the nature of the activity, it is engaged in an industry when it does so.

175. That leads to the consideration whether charitable enterprises can at all be industries. Viewing the problem from the angle from which one must, according to me, view the State's inalienable functions, it seems to me to follow logically that a systematic activity which is organised or arranged in a manner in which trade or business is generally organised or arranged would be an industry despite the fact that it proceeds from charitable motives. It is the nature of the activity that one has to consider and it is upon the application of that test that the State's inalienable functions fall within the definition of 'industry'. The very same principle must yield the result that just as the consideration as to who conducts an activity is irrelevant for determining whether the activity is an industry, so is the fact that the activity is charitable in nature or is undertaken with a charitable motive. The status or capacity, corporate or constitutional, of the employer would have, if at all, closer nexus, than his motive, with the question whether the activity is an industry. And yet that circumstance, according to me, cannot affect the decision of the question. The motive which propels an activity is yet another step removed and, ex hypothesi, can have no relevance on the question as to what is the nature of the activity. It is never true to say that the nature of an activity is charitable. The subjective motive force of an activity can be charity but for the purpose of deciding whether an activity is an industry, one has to look at the process involved in the activity, objectively. The argument that he who does charity is not doing trade or business misses the point because the true test is whether the activity, considered objectively, is organised or arranged in a manner in which trade or business is normally organised or arranged. If so, the activity would be an industry no matter whether the employer is actuated by charitable motives in undertaking it. The jural foundation of any attempt to except charitable enterprises from the scope of the definition can only be that such enterprises are not undertaken for profit. But then that, clearly, is to introduce the profit-concept by a side wind, a concept which, I suppose, has been rejected consistently over the years. If any principle can be

said to be settled law in this vexed field it is this : the twin consideration of profit motive and capital investment is irrelevant for determining whether an activity is an industry. Therefore, activities which are dominated by charitable motives, either in the sense that they involve the rendering of free or near-free services or in the sense that the profits which they yield are diverted to charitable purposes, are not beyond the pale of the definition in Section 2(j). It is as much beside the point to inquire who is the employer as it is to inquire why is the activity undertaken and what the employer does with his profits, if any.

176. Judged by these tests, I find myself unable to accept the broad formulation that a Solicitor's establishment cannot be an industry. A Solicitor, undoubtedly, does not carry on trade or business when he acts for his client or advises him or pleads for him, if and when pleading is permissible to him. He pursues a profession which is variously and justifiably described as learned, liberal or noble. But, with great respect, 1 find it difficult to infer from the language of the definition in Section 2(j), as was done by this Court in The National Union of Commercial Employees and Anr. v. M. R. Meher, Industrial Tribunal, Bombay and Ors. : [1962]44ITR6(SC) that the legislature could not have intended to bring a liberal profession like that of an attorney within the ambit of the definition of industry. In Hospital Mazdoor Sabha (supra) the Court while evolving a working principle stated that an industrial activity generally involves, inter alia, the cooperation of the employer and the employee. That the production of goods or the rendering of material services to the community must be the direct and proximate result of such cooperation is a further extension of that principle and it is broadly by the application thereof that a Solicitor's establishment is held not to attract the definition clause. 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 dependant 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 stop 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 unhapply 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. Beside the fact that this Court has so held in National Union of Commercial Employees, (supra) 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.

177. The case of the clubs, on the present definition, is weaker still; and not only do I consider that the definition squarely covers them, except to the limited extent indicated by Brother Krishna Iyer in his judgment, but I see no justification for amending the law so as to exclude them from the operation of the industrial laws. The fact that the running of clubs is not a calling of the club or its managing committee, that the club has no existence apart from its members, that it exists for its members though occasionally strangers also take the benefit of its services and that even with the admission of guests the club remains a members' self-serving institution, seems to me, with respect, not to touch the core of the problem. And the argument that the activity of the clubs cannot be described as trade or business or manufacture overlooks, with respect, that the true test can only be whether the activity is organised or arranged in a manner in which a trade or business is normally organised or arranged. I have already said enough on that question.

178. On the remaining aspects of the case I have nothing useful to add to the penetrating analysis of the problem made by Brother Krishna Iyer in his judgment.

Jaswant Singh, J.

179. It may be recalled that in the order dated February 21, 1978 pronounced by our learned brother, Chandrachud, J. (as he then was) on behalf of himself, brother Tulzapurkar and myself, expressing our respectful agreement with the view expressed by our learned brother Krishna Iyer that the Bangalore Water Supply & Sewerage Board appeal be dismissed, it was stated that we would indicate the area of concurrence and divergence, if any, later on. Accordingly, we proceed to do that now.

180. The definition of the term 'industry' as contained in Section 2(j) of the Industrial Disputes Act which is in two parts being vague and too wide as pointed out by Beg, C.J. and Krishna Iyer, J., we have struggled to find out its true scope and ambit in the light of plethora of decisions of this Court which have been laying down fresh tests from time to time making our task an uphill one. However, bearing in mind the collocation of the terms in which the definition is couched and applying the doctrine of noscitur a sociis (which, as pointed out by this Court in State of Bombay and Ors. v. The Hospital Mazdoor Sabha and Ors. : (1960)ILLJ251SC means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. Expressed differently, it means that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it, we are of the view that despite the width of the definition it could not be the intention of the Legislature that categories 2 and 3 of the charities alluded to by our learned brother Krishna Iyer in his judgment, hospital run on charitable basis or as a part of the functions of the Government or local bodies like municipalities and educational and research institutions whether run by private entities or by Government and liberal and learned professions like that of doctors, lawyers and teachers, the pursuit of which is dependent upon an individual's own education, intellectual attainments and special expertise should

fall within the pale of the definition. We are inclined to think that the definition is limited to those activities systematically or habitually undertaken on commercial lines by private entrepreneurs with the cooperation of employees for the production or distribution of goods, or for the rendering of material services to the community at large or a part of such community. It is needless to emphasise that in the case of liberal professions, the contribution of the usual type of employees employed by the professionals to the value of the end product (viz. advice and q services rendered to the client) is so marginal that the end product cannot be regarded as the fruit of the cooperation between the professional and his employees.

181. It may be pertinent to mention in this connection that the need for excluding some callings, services and undertakings from the purview of the aforesaid definition has been felt and recognised by this Court from time to time while explaining the scope of the definition of 'industry'. This is evident from the observations made by this Court in State of Bombay and Ors. v. The Hospital Mazdoor Sabha and Ors. (supra), Secretary, Madras Gymkhana Club Employees Uinon v. Management of the Gymkhana Club : (1967)IILLJ720SC and Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi : (1970)IILLJ266SC . Speaking for the Bench in State of Bombay and Ors. v. The Hospital Mazdoor Sabha and Ors. (supra), Gajendragadkar, J. (as he then was) observed in this connection thus :

It is clear, however, that though Section 2(j) uses words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings. If all the words used are given their widest meaning, all services and all callings would come within the purview of the definition; even service rendered by a servant purely in a personal or domestic matter or even in a casual way would fall within the definition. It is not and cannot be suggested that in its wide sweep the word 'service' is intended to include service however rendered in whatsoever capacity and for whatsoever reason. We must, therefore, consider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in Section 2(j); and that no doubt is a somewhat difficult problem to decide.

182. 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.

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