THE BANGALORE WATER SUPPLY: CASE ANALYSIS

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CASE ANALYSIS –

Bangalore Water-Supply Vs R. Rajappa & Others

CITATIONS:

1978 AIR 548, 1978 SCR (3) 207

CORUM:

Beg, M. Hameedullah (Cj), Chandrachud, Y.V., Bhagwati, P.N., Krishnaiyer, V.R. & Tulzapurkar, V.D., Desai, D.A. & Singh, Jaswant

PETITIONER:

BANGALORE WATER-SUPPLY & SEWERAGE BOARD, ETC.

RESPONDENT:

R. RAJAPPA & OTHERS

DATE OF JUDGMENT:

21/02/1978

FACTS OF THE CASE

The respondent employees were fined by the Appellant Board for misconduct and various sums were recovered from them. Therefore, they filed a Claims Application No. 5/72 under Section 33C (2) of the Industrial Disputes Act, alleging that the said punishment was imposed in violation of the principles of natural justice.

The appellant Board raised a preliminary objection before the Labour Court that the Board, a statutory body performing what is in essence a regal function by providing the basic amenities to the citizens, is not an industry within the meaning of the expression under section 2(j) of the Industrial Disputes Act, and consequently the employees were not workmen and the Labour Court had no jurisdiction to decide the claim of the workmen.

This objection being over-ruled, the appellant Board filed two Writ 'Petitions before the Karnataka High Court at Bangalore. The Division Bench of that High Court dismissed the petitions and held that the appellant Board is "industry" within the meaning 'of the expression under section 2(i) of the Industrial, Disputes Act, 1947.

The appeals by Special Leave, considering "the chances of confusion from the crop 'of cases in an area where the common man has to understand and apply the law and the desirability that there should be, comprehensive, clear and conclusive declaration as to what is an industry under the Industrial Disputes Act as it stands" were placed for consideration by a larger Bench.

ISSUES INVOLVED

1. The issue in the case was that whether Bangalore Water Supply and Sewerage Board will fall under the definition of 'Industry' and in fact, particularly the issue was what is an 'Industry' under Section 2(j) of the Industrial Dispute Act?
2. Whether Charitable Institutions Are Industries?
3. Do clubs and other organizations whose general emphasis is not on profit-making but fellowship and self-service fit into the definitional circle?
4. Would a university or college or school or research institute be called an industry?
5. Could a lawyer's chamber or chartered accountant's office, a doctor's clinic or other liberal profession's occupation or calling be designated an industry?
6. Are governmental functions, strict sense, industrial and if not, what is the extent of the immunity of instrumentalities of government?
7. Whether Sovereign or Regal functions will be industry?
8. Whether Municipal Corporations Industry?
9. Whether Hospital is Industry?
10. What is the meaning of the term 'industry'?

RULES/ LAWS APPLICABLE

Section 2(gg) (j) in The Industrial Disputes Act, 1947

(j) " industry" means any systematic activity carried on by co- operation 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 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 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 of the Plantations Labour Act, 1951 (69 of 1951); or

(2) hospitals or dispensaries; or

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

(4) institutions owned or managed by organizations 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 practiced by an individual or body or 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;]

Section 33C in The Industrial Disputes Act, 1947

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; [1] within a period not exceeding three months:] [2]Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

JUDGMENT

It held that the Bangalore Water Supply and Sewerage Board will fall under the definition of the industry and by justifying this it gave an elaborating definition of industry.

'Industry', as defined in Section 2(j) and explained in Banerjee, has a wide import. (a) Where (i) systematic activity, (ii) organized by co-operation 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.

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 and in this judgment, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements, 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 adventure 'analogous' to the carrying on of trade or business. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee may be dissimilar. It does not matter, if on the employment terms there is analogy.

Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or other 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.

ANALYSIS

The ruling by a five-judge Supreme Court Bench, recommending the setting up of a larger Bench to review the definition of "industry" as interpreted in law since 1978, is a wake up call to the legislature and the executive. The crux of the issue before the court in ***State of Uttar Pradesh v. Jasbir Singh***[1] taken up along with nine other civil appeals, was whether, for purposes of application of the Industrial Disputes Act 1947, the Bangalore Water Supply case that amplified the definition of "industry" should continue to be the law of the land.

Employers in many service establishments and Government departments, aggrieved by the ruling in the Bangalore Water Supply case raised demands for their exclusion from the ambit of the IDA. Parliament subsequently passed in 1982 an amendment to the IDA, which sought to exclude many kinds of establishments from the definition. However, the amendment was never notified.

The latest order of the Bench headed by Justice N. Santosh Hegde holds that the Iyer Bench order needs a review in view of the executive's failure to notify and enforce the amended restrictive definition of "industry". The Government had explained before courts that the 1982 amendment was not notified in view of the fact that no alternative machinery for redress of grievances of employees in establishments excluded by the amendment had been provided.

The Hegde Bench itself has pointed out that it was only in the absence of an unambiguous definition of industry in the IDA that the apex court delivered its ruling in 1978, and that at the

[1] **ILR 1979 Delhi 571**

same time, Justice Krishna Iyer had said that "our judgment has no pontifical flavour but seeks to serve the future hour till changes in the law or in industrial culture occur".

No doubt, the question of a differentiated piece of industrial relations legislation for service establishments is becoming ever more relevant because the role of the service sector in the economy is growing. Services are also becoming a subject of international trade negotiations and are being opened to foreign capital. Many service activities such as health care, education, water and power supply, for long either the obligation or the prerogative of governments, are now undertaken by private entrepreneurs.

There is a need, on the one side, to protect the legitimate interests and democratic rights of workers in these sectors, and on the other, to minimize the scope for disruption of industrial peace in these vital sectors to protect the interests of the public. All these reasons are important enough to warrant a separate law for these services.

However, some observations made by the Hegde Bench in favour of a legal review of the 1978 ruling are on quite different lines and highly debatable. The order says that there is an "overemphasis on the rights of workers" in industrial law and that this has resulted in payment of "huge amounts as back wages" to workers illegally terminated or retrenched and that these awards "sometimes take away the very substratum of industry".

Justice Krishna Iyer had remarked in his ruling (quoted by the Hegde order itself) that the "working class, unfamiliar with the sophistications of definitions and shower of decisions, unable to secure expert legal opinion, what with poverty pricing them out of the justice market and denying them the staying power to withstand the multi-decked litigated process, de facto is denied social justice if legal drafting is vagarious, definitions indefinite and court rulings contradictory". These remarks were made in support of an expansive definition of "industry".

The Hegde Bench ruling attributes what it calls "the inhibitions and the difficulties which are being exercised by the legislature and the executive in bringing into force the amended industrial law" to the interpretation of the definition of "industry" in the 1978 judgment. This also ignores the explanation given by the Government for non-enforcement of the restrictive amendment.

The apex court says that "an over-expansive interpretation of the definition of industry might be a deterrent to private enterprise in India where public employment opportunities are scarce". However, neither economic theory nor the decades of growth of the market economy in developed countries testifies to protection of employees' basic rights being a hurdle to progress. Thus the remarks on macroeconomic tendencies made by the latest ruling seem to be no more than assumptions.

Justice Chandrachud, a member of the Bench that delivered the 1978 verdict, had said that the "problem [of definition of industry] is far too policy-oriented to be satisfactorily settled by judicial decisions. Parliament must step in and legislate in a manner which will leave no doubt as to its intention". These, are wise words.

In the present case the court by applying liberal interpretation gave a wider meaning to the definition of industry so as to include all kinds of activities wherein there is an employer and employee relationship.

TRIPLE TEST

After the Bangalore Water supply case the Supreme Court came up with a working principle called as 'triple test'

- There should be systematic Activity
- Organized by Co-operation between employer and employee,

- For the production and/or distribution of goods and services calculated to satisfy human wants and wishes.[2]

The following points were also emphasized in this case:[3]

1. Industry does not include spiritual or religious services or services geared to celestial bliss
2. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
3. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer- employee relationship
4. If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking

Therefore, the consequences of the decision in this case are that professions, clubs, educational institutions co-operatives, research institutes, charitable projects and other kindred adventures, if they fulfil the triple test stated above cannot be exempted from the scope of section 2(j) of the Act.

WHAT DOES NOT COME UNDER THE DEFINITION OF 'INDUSTRY?'

- In ***State of Rajasthan v. Ganeshi lal***, it was held that the law Department was not an Industry. In accordance with the Industrial Disputes Act, 1947, in this case, the respondent was working as a peon for a Public Prosecutor as a temporary employee on a contract basis. The issue before the court was with regard to his termination. But the court went on to hold that the accepted concept of an industry cannot be applied to the Law department of the Government. Though the labour Court and the high Court did not even go into the details of why a law department cannot be considered as an industry, but was nevertheless held to not be an industry.
- "Forest department is not an industry" was the ratio decidendi of ***State of Gujarat v. Pratam Singh Narsingh Parmar.***[4] The case explicitly mentions that ordinarily a department of the

[2] **Bangalore Water-Supply and Sewerage Board V. R. Rajappa, AIR (1978) S.C. 610**

[3] **S.N. Mishra, Labour and Industrial Laws, Ed., 25th, 2009, New Delhi, Central Law Publications, P.25**

[4] **(2001) 9 SCC 713**

government cannot be held to be an industry but rather it is part of the sovereign function and it would be for the person concerned who claims the same to also prove it.

- The Census department of Government of India, will not come within the purview of 'industry' as defined under the Industrial Disputes Act. The same was held in the case of ***Md. Raj Mohammad v. Industrial Tribunal*** –cum-Labour court, Warangal. The facts of the case are that the petitioner was appointed as a Tabulator on a consolidated pay of Rs. 280.00 per month, and he worked continuously at the office of the Regional Joint Director of Census, Khammam from April 24, 1981 to February 27, 1982. All of a sudden the Regional Joint Director, Census Operations, Khammam Region prevented him from attending to his duties thereby violating the provisions of Section 25-F of the Industrial Disputes Act and neither the petitioner was given notice nor retrenchment compensation, though he worked continuously for a period of 240 days. After termination of his service, the petitioner approached the respondent on several occasions to provide him with the job but his efforts went in vain. Since the date of his termination, the petitioner could not secure any alternative job and due to unemployment and financial distress he could not approach the Tribunal immediately and as such, there was a delay in approaching the Industrial Tribunal and same needs to be viewed leniently. He approached to the tribunal for the reinstatement and the same was delivered. But with regard to the first aspect, the Labour Court relied upon the principles laid down by the Hon'ble Supreme Court in Himanshu Kumar Vidyarathi and others v. State of Bihar and held that the Census Department is not an industry and disengagement of the petitioner from service cannot be construed to be a retrenchment under the Industrial Disputes Act.
- An employer, who having installed a Photostat machine in a room of 12'' x 8' and working himself with the help of an operator and the shop itself being small in nature would not come within the purview of 'industry' as defined under the industrial disputes act. This was held in ***Soni Photostat Centre v. Basudev Gupta.***[5] The brief facts of the case as they appear from record are that the petitioner had a Photostat machine installed in a room of 128 square feet. The shop was registered with the Director of Industries bearing a Registration No. SSI 53612. There were two electrostatic machines in the shop. One of the machines was used for work and the other was used for display to secure orders for sale of the electrostatic machine on commission. It is alleged that the workman required an experience certificate for applying for

[5] **2004 (1) AWC 252**

job elsewhere and the same was given to him on 8.12.1990 by the proprietor of the shop. Thereafter the workman worked in the petitioner's establishment as helper till 10.12.1990. The petitioner alleged that after taking experience certificate, he left the job himself for better prospects. The main issue raised in this case was whether the Photostat Centre comes under the definition of 'industry'. It was delivered that, "a single lawyer, a rural medical practitioner of urban doctor with a little assistant and/or menial servant may play a profession but may not be said to run an industry". That is not because the employee does not make a contribution nor because the profession is too high to be classified as a trade or industry with its commercial connotations but because there is nothing like organised labour in such employment.

- District Literary Samiti, as constituted under a scheme implemented by the government for eradication of literacy, will not be 'industry' as defined by I.D Act and the same was held in Project Director, ***District Literacy Samiti v. Ms. Mamta Srivastava and another***. The facts of this case are that a Ms. Mamta Srivastava was working in the applicant's establishment. Her services were terminated and, therefore, an industrial dispute was raised before the Competent Authority. Conciliation having failed the matter was referred to the Labour Court. The issue raised was whether the DLS will come under the definition of Industry. Ultimately, the writ petition was heard and subsequently held that the applicant's establishment is not an 'industry' and, therefore, the Industrial Disputes Act is not applicable.
- The Diocese of Church was held to be not an 'industry' in the case of ***Diocese of Amritsar of Church of North India*** and ***others v Buta Anayat Masih and others.*** In the mentioned case the Respondent joined the petitioners' church as an Evangelist on a monthly salary and was terminated from the same. The Respondent filed a suit for reinstatement, continuity of service and back wages before the Labour Court. According to him the termination of service, notice, charge-sheet and enquiry, were bad in law and the Labour Court accepted reference and contention of the respondent on basis of evidence, granted reliefs and passed an ex-parte order. The application for setting aside the ex-parte award was filed beyond a period of 30 days and after the publication of award, the application was rejected. And this was the contention of the current petition – Whether the writ Petition filed by Petitioner was maintainable?
- In order to decide whether the petitioner was covered under the term industry in accordance to the Act and whether the evangelist was a worker, the court sought help from a judicial

precedent in, ***Bangalore Water Supply and Sewerage Board v. A. Rajappa and others***[6], and went onto hold that any systematic activity, organized by co-operation between employer and employee for production/or and distribution of goods services to satisfy human wants and wishes was industry as covered under definition of the Act but those services calculated to serve human wants and wishes which were spiritual and religious could not be termed as industry and as the respondent was working for the petitioner for activities that involved spirituality, the petitioner could not thereby be termed as an industry.

- "A 'temple' is not an 'industry". And it was held in ***Indravadan N. Adhvaryu v. Laxmidevnaryan Dev Trust.*** The facts of this case are that the petitioner, who was working in Dholera Swaminarayan Temple of the respondent Trust raised an industrial dispute before the Labour Court, Nadiad, on the ground that his service has been terminated without following the provisions of Section 25F of the Industrial Disputes Act. But the court observed that such a submission cannot be accepted as the temple run by the Trust is not involved in any business or undertaking any manufacturing activity to include it within the definition of 'industry'.
- In ***Shrimali v. District Development Officer***[7], wherein there was an undertaking of famine and draught relief works by State government for introducing certain schemes to provide relief and some works were also provided to the affected people, instead of distributing doles. The question that arose was whether such functions were sovereign functions. It was held that it would be difficult to hold such an undertaking as an industry.

RECENT DEVELOPMENTS

After the Bangalore Water supply case, there is still chaotic situation related to the sovereign functions, as per the previous decisions it is clearly mentioned that sovereign activities are excluded from the definition. Despite having the working principle there is still problem in deciding the problem. Such conflict arose in ***Chief Conservator of Forest v. Jagannath Maruti Kondare***[8] and ***State of Gujarat v. Pratamsingh Narsingh Parmar***[9], where in the former case

[6] **1978 SCR (3) 207**

[7] **(1989) 1 GLR 396**

[8] **AIR 1996 SC 2898**

[9] **(2001) 9 SCC 713**

forest department of State of Maharashtra was held to be an industry and in the later case it was held that forest department of State of Gujarat is not an industry. Constitutional Bench of five judges in ***State of UP v. Jai Bir Singh***[10], in this case it was held that a caveat has to be entered on confining 'sovereign functions' to the traditional so described as 'inalienable functions' comparable to those performed by a monarch, a ruler or a non-democratic government. The learned judges in the Bangalore Water Supply a Sewerage Board case seem to have confined only such sovereign functions outside the purview of 'industry' which can be termed strictly as constitutional functions of the three wings of the State i.e. executive, legislature and judiciary. The concept of sovereignty in a constitutional democracy is different from the traditional concept of sovereignty which is confined to 'law and order', 'defense', 'law making' and 'justice dispensation'. In a democracy governed by the Constitution the sovereignty vests in the people and the State is obliged to discharge its constitutional obligations contained in the Directive Principles of the State Policy in Part – IV of the Constitution of India. From that point of view, wherever the government undertakes public welfare activities in discharge of its constitutional obligations, as provided in part-IV of the Constitution, such activities should be treated as activities in discharge of sovereign functions falling outside the purview of 'industry'. Whether employees employed in such welfare activities of the government require protection, apart from the constitutional rights conferred on them, may be a subject of separate legislation but for that reason, such governmental activities cannot be brought within the fold of industrial law by giving an undue expansive and wide meaning to the words used in the definition of industry.

CONCLUSION

The Supreme Court has restored judicial discipline and thereby prevented an unnecessary court-initiated turmoil in the area of labour law by giving a judgment in Bangalore Water Supply case[11]. Seven Judges of the Apex Court had given a widely ranging definition of

[10] **2017 (3) SCC 311**

[11] **Supra**

"industry" under the Act and ever since, the case has been applied as law throughout the country.

The Parliament which had amended the definition of "industry" in 1982 restricted the wide meaning given by the Bangalore Water Supply case. The new definition sought to exclude institutions like hospitals, dispensaries, educational, scientific and research or training institutes, institutions engaged in charitable, social philanthropic services. It was also proposed to exclude sovereign functions of the Government including activities like atomic energy, space and defense research. For all these institutions, a separate body was proposed to be created to address grievances, but after this legislatives mandate, the successive Governments have been reluctant to bring the said law into force by merely issuing a notification.

It remains a debatable point as to what the Apex Court would do if a petition moved for the enforcement of this definition in terms of ***A. K. Roy v. Union of India***[12] where it was held that a legislative mandate cannot be held in abeyance by the ruling politicians for an unreasonable period.

In 1998, when a two-Judges Bench of the Kerala High Court sought a reconsideration of the 1978 judgment in the Coir Board case, a three-Judges Bench of Chief Justice A. S. Anand, Justice S. P. Bharucha and M. K. Mukherjee said that the two judges were bound by the judgment of the larger bench in Bangalore Water Supply. In the opinion of the three judges, the said judgment did not require any reconsideration and they also sent out a silent but clear message that they will not step in where political executive has thought it wise to keep off.

The wide definition of "industry" has given opportunity to both the employer and the employee to raise issues i.e. one trying to pull out of this definition, to be out of the clutches of the said Act, and the other bringing within it to receive benefits under it. Due to the width of the

[12] **1982 (1) SCC 271**

periphery of the word "industry", there is a tug-o-war between the two, in spite of the various decision of the Court.

The law in force presently is the interpretation of the original Section 2(j) by Rajappa's Case. Focusing solely on the merits of the case it is a super judgment which has taken into consideration the social and economic culture of our country. The decision is distinctly pro-labour as it seeks to bring more activities within the fold of the Industrial Dispute Act 1947. In practical terms, the labour forces of the country are much better position now, than they would have been had the amended S. 2(j) been notified. This is because the amended S. 2(j) excludes some categories of employment which squarely comes within the fold of Rajappa's case.

But at the same time, a glance at the judgment would suggest that it is actually a different law altogether as compared to the original S. 2(j). The question really is whether the judiciary is entitled to embark on such an expedition. Even in a democracy, following the theory of separation of powers, the judiciary has implied authority to fill in the gaps left by the legislature. But, a glance at Rajappa's case and the decisions preceding it would suggest that the judiciary went far ahead than merely filling the gaps lift by the legislature.

In the current scenario industries' have become one of the most vital parts of the society's smooth run, when there is no harmonious relation between workmen and employee it leads to dysfunction. When the law itself is not clear regarding the term 'industry' it will definitely affect the industry on a large scale. The law in force presently is the interpretation of the original Section 2(j). Focusing solely on the merits of the case it is judgment which has taken into consideration. The decision is distinctly pro-labour as it seeks to bring more activities within the fold of the Industrial Dispute Act 1947. In practical terms, the labour forces of the country are much better position now, than they would have been had the amended S. 2(j) been notified. This is because the amended S. 2(j) excludes some categories of employment which squarely comes within the fold of Rajappa's case. But at the same time, a glance at the judgment would suggest that it is actually a different law altogether as compared to the original S. 2(j). The

question really is whether the judiciary is entitled to embark on such an expedition. Even in a democracy, following the theory of separation of powers, the judiciary has implied authority to fill in the gaps left by the legislature. After the Jai Bir Singh case there is no such astonishing judgment, which has altered the definition. A crucial step should be taken to clear the lacunae.