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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No./379/89
T.A. No.

DATE OF DECISION August 17, 1993

Union of India Petitioner

Mr. Akil Kureshi Advocate for the Petitioner(s)

Versus

Mavji Velji Respondent

Mr. H. K. Rathod. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. R. C. Bhatt

: Judicial Member.

The Hon'ble Mr. M. R. Kolhatkar

: Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? X
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

Union of India through

Porbandar Base,
Fishry Survey of India,
68, K.G. Road,
Shitla Road,
Porbandar.

...Applicant.

Advocate

Mr. Akil Kureshi

VERSUS

Mavji Velgi,
C/o, Bhartiya Mazdoor Sangh,
D.V. Chambers,
Opp-Arya Samaj Mandir,
Rajkot

....Respondent

Advocate

Mr. H.K. Rathod

JUDGEMENT

O.A./379/89

Date : 17/8/1993

Per : Hon'ble Shri M.R. Kolhatkar,
Administrative Member.

This is an application

by Union of India through Fishery Survey of India (FSI)
Porbandar, under Central Administrative Tribunals Act,
1985 impugning an order passed by Central Industrial
Tribunal (CIT) Ahmedabad in reference no. ITC 7/86 dated
3rd November, 1988 published on 29th December, 1988,
whereby the CIT held FSI was an industry and that
employee (respondent in this case) was a workman

within the meaning of Industrial Disputes Act, 1947 and, on facts, held that the employee had put in not less than one year's service, that he was entitled to reinstatement but that, as the project had been discontinued and there was no work available, he could not be reinstated but should be paid the salary for the intervening period and also compensation for a period of 9 months.

2. The relief claimed by the Applicant is to quash and set aside the impugned award and reject the reference and pass other and further orders.

3. The case was admitted on 25th January, 1990 and reply by the respondent was filed on 24th April, 1990, but the record of CIT was called only on 27th November, 1992, on receipt whereof the case was finally heard. The Respondent did not appear at the time of final hearing.

4. We make it clear that we are considering the application by virtue of our jurisdiction under Article 226 of the Constitution as decided in full bench judgement of CAT in A Padmavalley and others v/s C P W D and Telecom (O.A./576/86). The ratio of that decision is that the powers of the Administrative Tribunals are the same as those of the High Court, under Article 226 of Constitution and the exercise

of that discretionary power would depend upon the facts and circumstances of each case as well as the principles laid down by the Hon'ble Supreme Court in Rohtas Industries case (AIR 1976 S C 425). We have entertained the application as an important issue of law about F S I being an industry or not is involved. In fact, in his reply, Respondent has also not challenged our jurisdiction but has stated as below :-

" The Hon'ble Tribunal has limited jurisdiction similar to the jurisdiction of High Court under Article 227 of the Constitution of India (to see) that the Industrial Tribunal has not committed any error in law as well as in facts. That (is) the view taken by Supreme Court of India in AIR 1984 SC 38. Such decision of Tribunal (i.e. CIT) cannot be interfered by the Hon'ble Tribunal ".

5. Coming to the decision of CIT, it considered the function of the F S I and considered the case law and came to the conclusion that F S I is an industry within the meaning of I D Act, 1947.. We have on record, translation

of the original Gujarati judgement of the Tribunal.. We are afraid the same is rather imperfect. We reproduce the reasons given by the Tribunal in their own words, as far as possible :-

1. The Government of India, Department of Fisheries has started a project to examine the possibilities for developments of Fisheries Industry on commercial basis in the sea near Porbandar which project has been named as **EX**ploratory Fisheries Project Porbandar " (para-3). "It is an office of Government of India and its main work is to examine the possibilities of the activities of Fisheries Industry, to what extent it can be expanded at the sea shore of Government of India on commercial basis and the activities of examining the same were taken on hand at Porbandar ." (para-5)
- " The main object was to make search from where the large quantity of fishes can be obtained within 20 km. distance of sea shore of Gujarat and for this purpose the officer and workmen, by going at far ~~wa~~ away places in the

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fishing boats and by throwing nets at different places and make observations of fishes found from the said places and to decide from which place the quantity of fishes can be had suitable for business." (para-8).

2. As per the conclusions arrived at in the Bangalore Water Supply case, the Departments of Central Government or State Government which are doing the work of sovereign function cannot be included in the definition of industry.
3. " (The activity undertaken by FSI) is not compulsory for state government or central government. Which activities is compulsory for state government or central government can be included in sovereign function. In the result, observations made in P.Jose case cannot be applied in our case." (para-8)-.
4. " The decision in " Director of Postal Services v/s K B B Kaimal (1984. Lab.I.C. 628) proceeded on the basis that clerks of P & T Department were governed by rules framed under Article 309 of the

of the Constitution of India. No evidence is produced to show that rules framed under Article 309 of Constituion of India are applicable to them i.e.F S I. Hence, the observations made in that judgement cannot be applied in our case." (para-9).

5. " In the Punjab case, the High Court had come to the conclusion that the Public Works Department cannot be included in the definition of industry. It is not compulsory either for state government or central government to take on hand such activities (i.e. activities for search of finding out that the activities of fisheries industry can be taken in hand on commercial basis on the sea shore of Gujarat by the Department of Fisheries , Industry of Government of India). Hence, the observation made in this case (Punjab) decision cannot be made applicable in our case. (para-10).

6. The C I T therefore, concluded that the Act of 1947 is applicable to the first party (Union of India).

7. The Applicant has stated that looking to the activities carried on by the Applicant, it cannot be said to be an 'industry' that the persons who are engaged in this project are governed by the provisions of CCS (CCA) Rules and they were given the benefits accordingly, that the persons who were engaged as daily rated were not given the said benefit because under the rules they were not entitled. Further it is contended that the functions are within the realm of the sovereign functions and in any case they do not fall under the activities of industry.

8. The Respondent has contended that the CIT has rightly decided the question of 'industry' on the basis of the decision of Supreme Court of India given in "Bangalore Water Supply" case..

9. During the course of arguments, the Applicant has cited the following cases in support of his contention that F S I is not an industry.

1.... P.Jose v/s Director, Central Institute of Fisheries (1986 Lab.

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I.C.1564) (Ratio: CIF is not an industry.)

2. State of Punjab v/s Shri Kuldip Singh (1983 Lab.I.C.83) (Ratio: National Highway is not an industry.)
3. Ravishankar Banerji v/s Union of India. (ATR 1987 (1) CAT.⁴⁵⁶ (Ratio- Geological Survey of India is not an industry.)
4. The Applicant also relied on a decision of this Tribunal in TA 240/97 decided on 28th February, 1988 holding that ISRO is not an industry.

10.. During the course of arguments, the Applicant argued that apart from the fact that the F S I was engaged in the work of surveying the potential for fishing in the coastal water of India which no private sector firm could undertake, the triple test laid down in the " Bangalore Water Supply case " had not been fulfilled. The triple test as stated by Applicant is :--

1. Systematic activity.
2. organized by cooperation between employer and employee.
3. for the production and / or distribution of goods and services calculated to satisfy human wants and wishes.

10.. He further argued that fishery resources supplement foodgrains resources and hence the work of Fishery Survey had a bearing on "public Distribution System" (PDS) which was a sovereign function ...

12.. In addition to the case law considered by CIT, the learned advocate for the Applicant relied on the decision of C A T Calcutta in Ravishankar Banerji's case (ATR 1987 (I) CAT 456) In that case, the issue was whether Geological Survey of India was industry. It was argued that GSI is a scientific non-industrial organization. Recruitment and conditions of service are guided by Rules framed under Article 309 of the Constitution of India.. This Tribunal, however, notices that the judgement proceeded on the basis of the definition of industry in s.2 (j) in the amendment Act 46 of 1982 which has not been enforced and which amendment specifically excludes scientific institution.. Though the activity of ~~fish~~ fishery Survey could said to be analogous to geological survey, Ravishankar Banerji's case cannot be said to ~~be~~ be good law basing itself as it does on a non-operative section of/Act and we consider it as per incuriam.

13. So far as P .Jose case is concerned,

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it held that Central Institute of Fisheries Nautical and Engineering and Training, not engaged in any ~~xx~~ research work but only imparting training to personnel in deep sea fishing and allied operations, hiring marginal employees to attend to certain minimal matters in the institute which in no manner destroyed the non-employee character of the institute, was not an industry as defined in s.2 (j) of I.D.Act., . Applicant also relied on full bench decision of Kerala High Court in " Director of Postal Services" case that employees governed by rules under Article 309 of the Constitution are not entitled to benefits under chapter V-A of I D Act.. It is thus, seen that the Jose case turned heavily on the institute not being a research institute, engaging minimum number of employees and Director/Postal Services case on service rules under Article 309 of the Constitution. The instant case, however, primarily turns on whether the work of exploratory fisheries is an essential governmental activity or not.

14. Here the full bench judgement of Punjab High Court (state of Punjab v/s Shri Kuldip Singh) appears to provide reliable guidance. That judgement which is based on a close analysis of Bangalore Water Supply & Sewerage Board the locus classicus viz. ^{v/s} Royappa (AIR 1978 v/s SC 548) advances the analysis of what can be

considered as essential governmental functions even further than Bangalore Water Supply case, which was more general in scope. In the Bangalore Water Supply case, the Hon'ble Supreme Court stated in the majority judgement.

" Sovereign functions strictly understood (above) qualify for exemption not the welfare activities or economic adventures undertaken by government or statutory bodies.".

But this general statement, is subject to the " dominant nature " test , " severibility " test and the need for contextual or associational shrinkage of the ambit of the term ' Industry '. In view of this, the Punjab High Court classified the state or governmental activity in four categories :-

1. Sovereign or regal function of the state.
2. Economic adventures partaking of the nature of trade and business undertaken by state as part its welfare activities.
3. Organized activity analogous to trade and business.
4. Residuary organized government activity.

15. Punjab High Court came to the conclusion that establishment, construction and

maintenance of National and State High Ways is an essential governmental function.

16. Now considering the functions of F S I, we are handicapped by the absence on record of specific government orders delineating the functions of the organization but on the basis of the material before the CIT and allowing for inaccuracies of translation, we find that that organization is concerned, not with commercial exploitation but with exploration of fisheries resources within the territorial waters of India (note- there is a reference to limit of 20 km and from this we may presume, reference to Article 297 of the Constitution) so that their commercial exploitation by trade and industry is feasible. The survey send boats far afield makes observations as to which are good areas and which are areas without much potential. In other words, it collects data on the potential which is useful for actual exploitation by trade or business. The advocate for the applicant argued and we agree that in a developing country like India no private firm would undertake this activity. It is not an activity in the nature of economic adventure, but it is an activity which is

pre-requisite for economic adventure. It is also not a welfare activity. Thus, it is an activity which though not a part of sovereign functions (which are five only- war-waging, policing, justicing, legislating and taxing) falls in the fourth category elaborated by the Punjab High Court as a logical implication of Bangalore Water Supply case. As in the case of National High Ways, the activity is closely related to sovereign function of defence viz. exploration of territorial waters of India, where foreign vessels are likely to make an attempt to encoach. We, therefore, consider that F S I itself and Exploratory Fisheries Project of F S I are part of essential governmental function.

17. Coming to the test of rules *under* proviso to Article 309, the Central Industrial Tribunal, appears to have relied on the assumption that casual labourers of F S I are not governed by Article 309.. This appears to be a wrong understanding of the rules. All rules relating to contingency paid labour which casual labour of F S I are, would evidently be under proviso to Article 309. In any case, the F S I not being an industry, this is only an additional argument.

18. We, therefore, conclude that the finding of C I T that F S I/Fisheries Exploratory Project is an industry was clearly wrong and deserves to be set aside. We, therefore, pass the following order.

19.

ORDER

- i. This O.A. is allowed.
- ii. The award of the C I T in reference No. ITC.7/86, dated 3rd November, 1988 published on 28th December, 1988 to the effect that the first party (Union of India through Exploratory Fisheries Project) was an industry is quashed and set aside. and
- iii. consequently its award directing the present applicant to pay back wages and compensation to the present respondents., Mavji Velji is also quashed and set aside and
- iv. the reference No. ITC.7/86 is rejected.
- v. No order as to costs.

R. C. Bhatt
(R.C.BHATT)
Judicial Member

M. R. Kolhatkar
(M.R.KOLHATKAR)
Administrative Member.