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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 518 1989
~~T.A. No.~~

DATE OF DECISION 23.11.90

Chief Engineer, Western Zone, CPWD, Bombay — Petitioner

Mr. R. K. Shetty — Advocate for the Petitioner (s)

Versus

Shri B. Y. Sadamast & another — Respondent

Miss Jayshree Sinha — Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. M. Y. Priolkar, Member (A)

The Hon'ble Mr. N. Dharmadan, Member (J)

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A. 518/89

Chief Engineer, Western Zone,
CPWD, 16th Floor, CGO Complex
101, M. K. Road, Bombay-20 — Applicant

vs.

1. Shri B. Y. Sadamast,
7/199, Maharashtra Housing Board
Sunder Nagar, Kalina,
Santacruz (East)
Bombay-400 055

2. Presiding Officer,
Central Government Industrial
Tribunal No.1, City Ice Bldg,
4th Floor, Perin Nariman Street,
Fort, Bombay-1 — Respondents

CORAM:

HON'BLE SHRI M.Y. PRIOLKAR, MEMBER (A)
HON'BLE SHRI N. DHARMADAN, MEMBER (J)

Shri R. K. Shetty — Advocate for the applicant

Miss Jayshree Sinha — Advocate for Respondent-1

JUDGMENT

(PER SHRI N. DHARMADAN, MEMBER (J)

The question that arises for consideration in this is one of general importance i.e. whether the Central Public Works Department is an 'industry' coming within the definition of section 2(j) of the Industrial Disputes Act, 1947?

2. The Chief Engineer, Western Zone, CPWD, Bombay is the applicant in this case. He is challenging Ext. A-7 Award passed by the second respondent, Central Government Industrial Tribunal, Bombay declaring that the action of the applicant in terminating the service of the first respondent Shri B. Y. Sadamast, w.e.f. 2.5.1983 was illegal and void. The Industrial Tribunal also directed the

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applicant to reinstate the first respondent, a peon in the office of the Supdt. Surveyor of Works at Bombay with full backwages from the date of his termination till his actual reinstatement.

3. The first respondent was originally appointed as a peon as per order dated 1.5.1981 on a short term basis for a period not exceeding three months. His service was terminated w.e.f. 31.9.1981 in terms of clause 5 of the order of appointment, Ext. A-1. But by another order dated 3.8.1981 he was again appointed as a peon on short term basis for a further period not exceeding three months. By similar orders he continued in service upto 2.5.1983, on which date his service was terminated by an office order. Thereafter the first respondent approached the Asstt. Labour Commissioner(C)1, Bombay, who negotiated the matter and submitted a failure report to the Ministry of Labour, Government of India, New Delhi. Considering the same the Govt. referred the following question to the second respondent, Industrial Tribunal,Bombay:

> "whether the action of the Chief Engineer West Zone, CPWD, Bombay in relation to his office of the Supdt. Surveyor of Works (WZ) at Bombay in terminating the service of Sri B. Y. Sadamast, a peon, w.e.f. 2.5.1983 is legal and justified? If not, to what relief and from what date, the workman concerned is entitled to?"

4. After considering the contention of the applicant and the first respondent, the Industrial Tribunal passed Ext. A-7 Award dated 14.12.1988 in favour of the first respondent. This Award is challenged in this case by the applicant mainly on the ground that the activities of Superindenting Surveyor of Works/Chief Engineer, CPWD Bombay would not come

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within the term 'industry' under section 2(j) of the Industrial Disputes Act, 1947 and that the Industrial Tribunal has not analysed in detail the day to day activities, duties and responsibilities of the Supdt. Surveyor of Works. The applicant also submitted that the Industrial Tribunal erred in applying the decision of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. Rayappa and others, (AIR 1978 SC 548)

5. The first respondent filed a reply affidavit denying all the averments in the application. He contended that the functions of the Supdtg. Surveyor/ Chief Engineer, CPWD are not sovereign functions and that the various facts pertaining to their activity in the light of the admission of the applicant would disclose that it is an industry covered by the Industrial Disputes Act, 1947.

6. Having heard the arguments and after perusing the records in the case, we are of the view that there is no sufficient materials available in this case to come to the conclusion either in favour of the applicant or in favour of the first respondent. The question whether the activities and functions in the office of the Supdtg. Surveyor Works/Chief Engineer, CPWD, Bombay are sovereign functions or other functions which would satisfy the 'triple tests' laid down by the Supreme Court in the famous 'Bangalore Water Supply Case' would depend upon a careful evaluation of the various functions and duties thereof. This has not been attempted by the second respondent, Industrial Tribunal, Bombay while passing the impugned Award Ext. A-7. The finding of the Industrial Tribunal

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that

> " In view of the decision of the Supreme Court in Bangalore Water Supply and Sewerage Board vs. Rayappa (1978 2 SCC 213), the contention that the CPWD is not an industry deserves to be mentioned only to be rejected. The functions discharged by the CPWD are not sovereign functions of the State and hence in view of the nature of the work done by this department it is very much an industry within the meaning of Industrial Disputes Act. It is immaterial that the office of the Chief Engineer is an attached office of Ministry of Urban Development and the office of the Supdt. Surveyor of Works is a part of the said office."

is not based on any materials or evidence produced by the parties. In fact, the parties have not aduced any evidence so as to enable the Tribunal to come to the above finding. In the absence of such evidence or materials it is difficult for us to sustain this Award passed in this case. Though the learned counsel on both sides cited a number of decisions at the bar to support their contentions we feel that it is unnecessary for us to examine them in the absence of basic materials and evidence. The application of the decisions can only be examined if the parties produce sufficient evidence in support of their contention and establish their case.

7. Recently the Central Administrative Tribunal Ernakulam Bench, in which one of us, (Shri N. Dharmadan), was a party considered the question whether the Fisheries Survey of India, an establishment under the Government of India, Ministry of Agriculture, is an industry or not and laid down that it is an industry. The following discussion in the judgment would be relevant and helpful for deciding the issue by the Industrial Tribunal:

> "3. Even if the argument that the Fisheries Survey of India is accepted as a research

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institution it would be difficult to hold that such an institution would not come within the definition of section 2(j) of the I.D. Act after the celebrated decision of the Supreme Court in Bangalore Water Supply & Swerage Board V. Rajappa, AIR 1978 SC 548. In that, the Court held as below:

> "... 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 innovations and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albiet without profit motive are industries."

In that decision the Court laid down the ingredients for satisfying the definition 'industry' in section 2(j) as follows:

a) Where (i) systematic activity (ii) organised by cooperation between employer and employee ...(iii) for the production and for distribution of goods and services calculated to satisfy human wants and wishes ... 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 activity with special emphasis on employer-employee relations

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

4. Though Malhotra in his 4th Edn. (1985) of the Law of Industrial Disputes states that this observation of the Supreme Court in the above case are only obiter, the Parliament accepted it as a binding law and amended the Industrial Disputes Act as per Amendment Act 49 of 1982 by excluding scientific and research institutions from the purview of the definition of 'industry' in the Industrial Disputes Act; the amendment has not yet been brought in to force or given effect to by issuing appropriate notification.

5. The second ground raised by the learned govt. counsel that this establishment is discharging sovereign and governmental function is also devoid of any merit. The respondents have not furnished any details to support this argument. The available materials clearly indicate that FSI can be regarded as an organisation propelled by systematic activity

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modelled on cooperation between employer and employee and calculated to throw up discoveries and inventions and useful solutions which benefits individual industries and the nation in terms of goods and services and wealth." This aspect is specifically dealt with by Chief Justice Beg in Bangalore Water case as follows:

> "... I do not feel happy about the use of the term 'Sovereign' here. I think theterm 'sovereign'should be reserved, technically and more correctly, for sphere of alternate decisions... Again, the term 'Royal', from which the term 'sovereign' functions appears to be derived, seems to be a misfit in a republic where the citizen shares political sovereignty in which he has even a legal share, however small, in as much as he exercises the right to vote.."

6. The question whether FSI is an agent of the Government discharges governmental function depend upon the real nature of its activities. There is no material to highlight its activities. Merely because some officials of the Government or certain bodies constituted by the Government for purpose of administration are given the powers to carry out its functions and duties of FSI would not make the organisation a governmental establishment in spirit and charactor. In Regional Provident Fund Commissioner, Karnataka Vs.Workmen represented by the General Secretary, Karnataka Provident Fund Employees Union and another (AIR 1984 SC 1897), the Supreme Court examined this question and revised the dictum of the High Court and held as follows:

> "Having regard to the various provisions of the Provident Fund Act and the nature of the business covered on by the Central Board the State Board, the Regional Committee and the Regional Provident Fund Commissioner, we are of the view that the Division Bench of the High Court was not right in holding that the State Government was not the appropriate Government..."

The Court earlier discussed the main issue thus:

> "...Institutions engaged in matters of such high public functions as observed by Mathew J in Sukhdev Singh's case (supra, AIR 1975 SC 1331) by virtue of their very nature performed governmental functions. They are truely agents of the Government and they function under the authority of the Government as provided in the Statute because the Central Government could have, for the purpose of introducing the scheme of compulsory contribution to the provident fund set up an organisation or department in the absence of the corporate

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> bodies engaged in the Provident Fund Act... We have no doubt that the beginning of provident fund organisation is governmental in character and does not pertain to any industry to which the Provident Fund Act applies..."
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> 7. In the instant case no materials are available to come to the conclusion in the light of the discussion of the Supreme Court that the FSI is discharging the inalienable functions of the State so as to exclude it from the definition of industry."

8. Thus it would be incumbent upon the parties to examine the very object and purpose coupled with the day to day activities that is being carried on in the office of the Supdt. Surveyor of Works/Chief Engineer, CPWD for arriving at a correct conclusion as to whether the same is an 'industry' within the meaning of section 2(j) of the Industrial Disputes Act, 1947. Neither parties in this case attempted to produce satisfactory evidence in this case to establish their contentions nor the Industrial Tribunal cared to focus its attention to these aspects. The only course which is opened to us is to set aside Ext. A-7 Award passed by the second respondent Industrial Tribunal and remit the matter for de novo consideration after giving opportunity to the parties to adduce sufficient and satisfactory evidence in support of their rival contentions raised in this case. Accordingly we set aside the Award Ext. A-7 dated 14.12.1988 and send back the matter to the Industrial Tribunal No.1, Bombay-1 for a fresh decision in accordance with the law after giving opportunity to produce evidence by the parties in this case, if they desire to do so.

9. In the result, the application is allowed to the extent indicated above. There will be no order as to costs.

(N. Dharmadan) 23.11.90
Member (J)

(M. Y. Priolkar) 23.11.90
Member (A)

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