IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2621 OF 1999

Shri Dnyaneshwar B. Ganwat ... Petitioner

V/s.

Karyakari Abhiyanta Chaskaman Prakalp Vibhag ... Respondent

Mr.U.B. Nighot for Petitioner
Mr.V. Pethe for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JUNE 9, 2010**

ORAL JUDGMENT:

1. The petition has been filed against the award of the Presiding Officer, Labour Court, Pune in Reference (IDA) No.302 of 1993. By this award, the Labour Court has rejected the Reference on the ground that the Irrigation Department against whom the reference was made was not an industry as defined u/s 2(j) of the Industrial Disputes Act.

2. The facts in the present matter fall within a narrow compass.

The petitioner workman was employed as a watchman by the respondent at Chas. He worked from 21.4.1991 to 21.4.1992. His services were then terminated by an oral order. The petitioner raised an industrial dispute which was referred for adjudication by the Government. The Labour Court, after considering the contentions of the parties, held that the Reference deserved to be rejected. The Labour Court accepted the submissions advanced on behalf of the respondent that the project of Irrigation Department on which the Petitioner was employed, was not an industry as

defined u/s 2(j). The Labour Court relied on the judgment of the Supreme Court in the case of *Executive Engineer, State of Karnataka v/s. Soma Shetty & Ors.,* **1997 II CLR 387** for drawing this conclusion. In view of this finding the Labour Court dismissed the reference.

3. Mr.Nighot, appearing for the petitioner, points out that the judgment in *Soma Shetty's case (supra),* is not applicable and that the Irrigation Department, Government of Maharashtra and projects of the Irrigation Department of the State of Maharashtra fall within the definition of "industry". He fortifies his submission by relying on the judgment of a learned Single Judge of this Court (Rebello, J.) in the case of *Executive Engineer, Yavatmal Medium Project Division & Anr. v/s. Anant Yadav Murate & anr*., **1998 (3) Mh.L.J. 897**.

4. On perusing the impugned award, it is apparent that the reference has been rejected only on the ground that the respondent is not an industry. In *Anant Yadav Murate & Anr.'s* case *(supra),* Rebello, J. while considering the judgment of the Supreme Court in *Soma Shetty's case (supra)*, has referred to an earlier judgment of the Supreme Court in the case of *Des Raj vs. State of Punjab & Ors., AIR 1988 SC 1182* and has observed that the judgment in the *Soma Shetty's case (supra)* is *per incuriam*. Rebello, J. has observed thus:

> 12. Therefore, while interpreting the judgment in Des Raj's case and Executive Engineer (State of Karnataka) thus one necessarily will have to proceed on the basis whether the latter judgment in the case of Executive Engineer (State of Karnataka) is per incuriam. A Full bench of this Court in the case of Kamleshkumar Ishwardas Patel v. Union of India & Ors., reported in 1994 Mh. L.J. 1669 was faced with such a situation. The Full Bench of this Court noted that what is binding under Article 141 of the Constitution of India is law declared by the Supreme Court. In the instant case and Des Raj's case the Irrigation Department of Punjab has been held to be an industry, based on the definition of Industry as it now stands, whereas applying the same

definition the Apex Court in the case of Executive Engineer (State of Karnataka) held it not to be an industry. In the case where the High Court is confronted with two conflicting judgments, the principles have been carved out as to which judgment to be followed when contrary decisions of the Supreme Court emanate from benches of equal strength. After considering the various judgments and reproducing the various paragraphs from the judgment of the Calcutta High Court in Bholanath v. Madanmohan, reported in A.I.R. 1988 Calcutta 1. The Full Bench of this Court concurred with the law as enunciated in Bholanath's case. The proposition that was accepted in Bholanath's case was if contrary decisions of the Supreme Court emanate from benches of equal strength, the course to be adopted by the High Court is, firstly, to try to reconcile and to explain those contrary decisions by assuming, as far as possible, that they applied to different sets of circumstances. However, when such contrary decisions of co-ordinate Benches cannot be reconciled then the High Court is not necessarily to follow the one which is later in point of time, but may follow the one which in its view is better in point of law. The Full Bench of this Court noted that there were two views on interpretation (1) that the later pronouncement had to be followed and (2) that one which is better in point of law. The Full Bench preferred to accept the latter view after considering the various other judgments and further that this approach was in consonance with what ancient Jurist Narada declared - Dharmashastra Virodhe Tu Yuktiykta Vidhe Smrita _ that is, when the Dharmashastra or law Codes of equal authority conflict with one another, the one appearing to be reasonable, or more reasonable is to be preferred and followed. The views of modem Jurist, Seervai, has also advocated a similar principle was also relied upon. Therefore, the task before me is clear as laid down by the Full Bench that what has to be followed is the view which is better in point of law.

13. On considering all the concepts of industry and after reviewing the various tests which need not be repeated, as the tests were laid down in Bangalore Water Supply's case, the concept of sovereign and regal function was explained in Chief Conservator of Forests. The Apex Court in para 13 specifically rejected an argument that welfare activities partake sovereign functions on the ground that if such a view was taken it would be eroding the view taken by it in Bangalore Water Supply's case. While observing that welfare activities partake sovereign functions the Apex Court did not notice this in Sub Divisional Inspector of Post, Vaikam and others. Therefore, considering the various precedents of the Apex Court itself it is clear that the law declared by the Apex Court is that welfare activities do not necessarily partake sovereign functions. In Executive Engineer (State of Karnataka) the reliance was placed on the judgment in the case of Union of India v. Jai Narain Singh (Supra). In Union of India v. Jai Narain Singh the Apex Court has merely noted that the Central Ground Water Board is not an Industry. It is not possible to discern from that judgment as to what were the reasons for the Apex Court to so hold. The other judgment relied on is that of State of Himachal Pradesh v. Suresh Kumar Verma & Anr. (supra). On a perusal of the fact and the law laid down it does not seem that the issue as to whether a particular department was an industry or not was in issue. What was in issue was whether the work charged employees who perform duty of transitory nature were appointed to posts and their appointment were on daily wage based in an appointment to a

post. The Apex Court therein noted that such appointments were not appointment to the posts and therefore, no directions could have been given to re-engage them in any work or appoint them against existing vacancies. Thus the two judgments relied upon by the Apex Court to arrive at the conclusion arrived at in Executive Engineer (State of Karnataka) (supra), nowhere have laid down the tests to hold as to why irrigation Department is to be excluded from the definition of industry. As pointed out earlier, even the case of Sub Divisional Inspector of Post, Vaikam and others was considered by the Apex Court in Physical Research Laboratory and explained the same in Paragraph 10 of the judgment. After that, it proceeded to apply the tests as laid down in Bangalore Water Supply. In the case of Des Raj v. State of Punjab (supra) the Apex Court had considered the tests laid down in various earlier judgments of the Apex Court itself, culminating in the judgment in Bangalore Water Supply (supra) and thereafter had arrived at a conclusion that the Irrigation Department falls within the definition of industry within the meaning of Section 2(j) of the I.D. Act. I am, therefore, of the considered opinion that the view laid down in Des Raj's case is the better in point of law and hence it is the view in Des Raj's case which will have to be followed. Once it is so held and as I have already set out earlier the work of the Irrigation Department of the State of Punjab and the material placed before this court including the written submissions filed on behalf of the petitioners show that the projects undertaken by the irrigation department of the State of Maharashtra is discharging the same or similar functions as the Irrigation Department of the State of Punjab. It, therefore, follows that the projects of the Irrigation Department or work connected that of the State of Maharashtra, on the same tests as applied by the Apex Court in Des Raj's case would fall within the definition of an industry for the purpose of Section 2(j) of the I.D. Act.

5. In view of the decision in the case of *Anant Yadav Murate & anr. (supra)*, it is obvious that the respondent herein which is an irrigation project of the State of Maharashtra is an industry. The finding of the Labour Court on this issue is set aside. The Reference will have to be decided by the Labour Court in respect of the other issues.

6. Accordingly, Rule is made absolute. The Reference (IDA) No.302 of 1993 is remanded to the Presiding Officer, I Labour Court, Pune for a decision on merits. The Labour Court will decide the reference By 31.12.2010.

7. Writ Petition is disposed of accordingly.