ORISSA HIGH COURT : C U T T A C K

W.P.(C) No.21798 of 2016

An application under Article 226 & 227 of
the Constitution of India

Bhismaraj Meher ***: Petitioner***

-Versus-

The Director, State Labour Institute, Kharvel Nagar, Bhubaneswar, Dist.-Khurda ***: Opposite Party***

For Petitioner : M/s. A.K. Nayak,
S.K. Sarangi

For Opposite Party : M/s. S. Dash,
S.S. Sahoo

J U D G M E N T

CORAM :

JUSTICE BISWANATH RATH
JUSTICE M.S. SAHOO

Date of hearing : 05.05.2023 :: Date of judgment::18.05.2023

Per: Biswanath Rath, J.

This Writ Petition at the instance of the so called workman involves a challenge to the award of the Labour Court, Bhubaneswar dated 5.12.2015 in I.D. Case No.35 of 2014 disfavoring the Petitioner-workman.

2. Background of this case appears to be; Petitioner upon becoming successful in an walk-in-interview was engaged as a Chowkidar-cum-Peon in the State Labour Institute-the sole Opposite Party herein at a

monthly honorarium of Rs.1500/- vide the engagement letter dated 02.01.2006 (Anexure-2). It is claimed that Petitioner was appointed as Chowkidar-cum-Peon being asked to work 24 hours in a day with a sum of Rs.1500/- per month. While the matter stood thus Petitioner made a representation to the Commissioner-cum-Secretary, Labour & Employment Department who was also then functioning as the Vice Chairman of the State Labour Institute, with a prayer to either increase his remuneration or to allow him to work for eight hours in a day and or even relaxing the working hours to enable himself to take up part time job elsewhere to maintain his livelihood. Petitioner claims that as a consequence of the representation vide Annexure-3 he was favored with a letter dated 2.04.2007 with allotment of working hours from 10.A.M. to 5 P.M. with as usual wages vide Annexure-4. Petitioner alleges that immediately after issuing of Annexure-4 in a surprise move on 1.05.2007 he was denied with employment, for which he again made a representation to Opposite Party No.1 on 1.05.2007 on the premises of illegal refusal of employment with effect from 1.05.2007 that too a verbal denial to work. It is claimed that this application was refused to be received by the authority. Petitioner through the communication vide Annexure-6 made a request to allow him to continue to work. In the meantime on the premises of his long absence from duty with effect from 30.03.2007 Petitioner was issued with a show cause. To which Petitioner replied on 2.04.2007. It is here vide Annexure-10 Petitioner was communicated on 9.05.2007 that he had himself abandoned his service. In the meantime on his complain before the Labour authority the matter was taken up for conciliation on 26.09.2007 and vide Annexure-11 Petitioner was communicated with failure of conciliation. In the meantime finding no respite Petitioner under bona fide impression that Government is not

taking any positive decision, filed Writ Petition vide W.P.(C) No.28465 of 2013 for appropriate direction. During pendency of the Writ Petition a reference was made on the issue by the competent authority and the dispute was accordingly registered as I.D. Case No.35 of 2014 before the Labour Court, Bhubaneswar. It is claimed that based on the statement of claim by the alleged workman and the written statement of the Management the Labour Court framed the following issues:-

"**I S S U E S**

1) *Whether the organisation of the first party management is an Industry as defined under Section 2-J of I.D. Act, 1947?*
2) *Whether the action of the management of State Labour Institute, Bhubaneswar in terminating the services of Sri Bhismaraj Meher, Choukidar-cum-Peon w.e.f. 1.5.2007 is legal and/or justified?*
3) *If not, what relief Sri Meher is entitled to?"*

3. Petitioner claims that in the adjudication of dispute the learned Labour Court entered into the evidence by respective parties with marking of documents as Exhibits. Finally through the award dated 5.12.2015 the Presiding Officer, Labour Court came to reject the reference on the premises that the proceeding is not maintainable on account of the Management therein doesn't come within the definition of "Industry" as per provision; section 2(J) of the Industrial Disputes Act, 1947 (hereinafter in short be reflected as "the I.D. Act, 1947"). Hence this Writ Petition.

4. This Court here takes note of the reference undertaken in the Industrial adjudication by the Labour Court, which runs as follows:-

"Whether the action of the management of State Labour Institute, Bhubaneswar in terminating the services of Sri Bhismaraj Meher, Choukidar-cum-Peon w.e.f. 1.5.2007 is legal and/or justified? If not, what relief Sri Meher is entitled to?"

5. Through the statement of claim the workman-Petitioner claimed as follows:-

2. That after giving test for the Post of Choukidar-cum-Peon & 2nd party-Workman was scheduled the aforesaid post & got appointment Letter No.SLI-11/98, Dated-02/01/2006 & at the time of termination last wage of 2nd party-Workman was Rs.1500/- per month.

3. 2nd party further stated that after rendering contineous employment for the period on dated-02/01/2006 to 30/04/2007, there is no stigma in the name of 2nd party-Workman.

4. While on dated-01/05/2007, 2nd party was reported for duty. Suddenly 1st party-management had refused employment of 2nd party-Workman, without holding any enquiry/ proceeding/ explanations etc.

5. On the said dated-01/05/2007 2nd party had submitted representation addressed to Director SLI to restore employment of 2nd party, but all are in vain.

6. It is a fact that service of 2nd party was terminated without compliance of sectoin 25-F(a)(b) of the Industrial Dispute Act, 1947 non the principle of natural Justice, followed by the 1st party while removing employment of 2nd party-Workman. It is also a fact that 2nd party-Workman had performed more than 240 days contineous employment in a twleve calender month.

7. That the 2nd party-Workman is a OBC/SEBC in the district of Nuapada. The employment was the employment was the source of income to maintain his family member. That after termination of employment 2nd party-Workman have not got any establishment & continued unemployment. That in view of above reasons 2nd party Workman demanded reinstatement in employment with full back wage & other service benefits.

8. That the 2nd party-Workman have filed List of documents separately this may kindly be accepted by the Hon'ble Court as 2nd party exhibites.

9. That in view of decisions held in Bangalore Water Supply and Severage Board VRS A-Rajappa & other respond in 1978(36) FLR-266 defination "Industry" under I.D. Act, 1947. It held to cover all profession, clubes, educational Institute, co-operative, Research Institute, charitable projects & anything which could be looked upon as organnised activity where there relationship employer & employee & goods were produced or service was rendered. It is a fact that establishment of 1st party is coming within the meaning of "Industry" & I am the Workman 4/s-2(s) of the said Act, 2nd party Workman in entitled to received relief in this forum."

6. In response to the above claim of workmen first party Management brought their written statement which runs as follows:-

"2. That the present reference is not maintainable in the eyes of law in view of the fact that the State Labour Institute is not an "Industry" within the meaning under the Industrial Disputes Act, 1947.

3. That the 1st Party i.e. the State Labour Institute, Bhubaneswar is a State Government sponsored autonomous body registered under the Societies Registration Act, 1860. It is a premier institute not only in Odisha but also in the country which is created vide Labour & Employment (Presently ESI) Department of Government of Odisha vide Resolution No.4331, dt.14.4.1993 and commenced its functioning from 1.5.1993. The General Council of the State Labour Institute, Orissa in its meeting held on 21.12.1994 under the Chairmanship of Hon'ble Minister Labour & Employment department, Government of Orissa

adopted the resolution accepting the Rules and Regulations of the State Labour Institute. The triple objectives of State Labour Institute are research, training and publication on Labour / HRD related issues. The objectives of the State Labour Institute are to initiate and promote professional activities in the field of labour and related matter and to undertake action oriented research, educational and training programmes in the fields of labour & employment management.

4. That the claim of 2nd party is not maintainable before this Hon'ble Court as the 1st party is not coming within the definition of industry under the provisions of Industrial Disputes Act, 1947. The research work is done in the State Labour Institute by eminent Trade union leaders, Professors of Universities, Scholars and Lawyers in resolving problems of Labour related issues like Migrant Labour and Child labour. Institute is not directly or indirectly carrying on any trade or business and its activities do not result into production or distribution of goods or services calculated to satisfy human wants and wishes. The knowledge acquired as a result of the research carried on by the institute is not sold but is utilized for the benefit of the Government. The organisation of the 1st Party is neither an industry within the definition u/s. 2 (j) of the Industrial Disputes Act, 1947 nor a factory within the meaning of Factories Act, 1948 and nor a commercial establishment. The 1st Party is a state government sponsored autonomous body working in the field of research and training and as such the reference is not tenable.

5. That notwithstanding the fact that the 1st party is not an industry and the present case is not

maintainable, even otherwise the claim of the 2nd party alleging termination of employment w.e.f.1.5.2007 is misconceived and baseless and the allegations of 2nd party in different paragraphs of the Statement of claim are entirely false and baseless. Even the present allegation of refusal of employment after more than eight years of alleged refusal of employment is nothing but intended to cause pecuniary gain and thereby to cause wrongful loss to the 1st party. It is a settled principle of law that the person who sleeps over his right cannot claim equity. This act of the 2nd party in raising the industrial dispute after lapse of more than 8 years clearly shows the delay and latches on his part for which he is not entitled to any relief from this Hon'ble Court.

It may be relevant to submit here that the aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of conduct of a workman, he would automatically be entitled to relief. The procedural laws like estoppels, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of Acceptance Sub silentio. The Respondent herein did not raise any industrial dispute questioning the alleged termination of his services within a reasonable time.

6. That without prejudice to the contention that the 1st party is not an industry within the Industrial Disputes Act, 1947, as regards the claim of 2nd party in different paragraphs of the Claim Statement, the 1st party submits as follows:-

The 2nd party was engaged to work as Choukidar-cum-Peon on contingent basis in the

State Labour Institute vide order No.SLI-11/98, Dt. 2.1.2006 with a monthly honorarium of Rs.1500/- (Rupees One thousand five hundred) only all inclusive. The 2nd party remained absent from his duty unauthorisedly on 30.3.2007 for which, a show cause notice was issued to him. The 2nd party in his reply to the said show cause notice submitted to 1st party on dt. 2.4.2007 admitted that he used to go outside for his personal work after the office hours without prior permission. Thereafter the 1st Party vide letter dt. 2.4.07 addressed to the 2nd party communicated that his explanation was not at all satisfactory and he was warned to discharge his duties properly. Besides the 2nd party was also communicated that his alleged claim of working for 24 hours a day under the 1st party is completely false and baseless and he should desist from making such baseless claims.

As per the informations available under the 1st party, the 2nd party remained absent from duty unauthorizedly w.e.f. 1.5.2007 onwards and did not turn up to resume duty under the 1st Party for which a notice was issued to the 2nd party by Registered Post with A.D. on 9.5.2007 calling upon him to report for duty and the 2nd party received the same on 17.05.07 at his native village. Despite receipt of the registered notice, the 2nd party did not report for work for which the 1st party compelled to draw a conclusion that the 2nd party is not interested to perform his duty in the organization as such the allegation of 2nd party of refusal of employment is false and concocted. It is the 2nd party himself who is to be blamed for his conduct and responsible for the situation. It is false to allege that there is no

stigma in the name of 2nd party rather he was warned on previous occasions. As per the available informations, it is not correct to submit that on 1.5.07, the 2nd party had submitted any representation to the Director SLI rather he remained absent from 1.5.07 onwards.

7. That it is humbly submitted that the Hon'ble Court for the effective adjudication of the case, required to examine the maintainability of the case as a preliminary issue as the 1st party is neither an industry within the definition u/s. 2 (j) of the Industrial Disputes Act, 1947 nor a factory within the meaning of Factories Act, 1948 and nor a commercial establishment. The findings on maintainability will decide whether it has jurisdiction to deal with the case on merits or not. Such preliminary issues are required to be settled for better appreciation of the case of the parties with reference to the claim on the basis of which the jurisdiction of the Court will have to be determined and it is open to the Court to decide the case on maintainability point and dispose it off as a preliminary issue which if not done would amount to improper exercise of jurisdiction and lead to miscarriage of justice. As such the Hon'ble Court for effective adjudication of the case may be pleased to decide the question of maintainability as a Preliminary issue. A separate petition will be filed by the 1st Party to decide the question of maintainability of the case as a preliminary issue prior to proceeding with the case on merit.

8. That it is humbly submitted that the Opposite Party hereby denies and disputes all statements/ allegations/ contentions in the statement of claim in different paragraph except those which are matters of record and the 2nd party is put to strict

proof of the same. In any event, the 1st Party is not responsible for the situation as alleged by the 2nd party. At present there is no requirement of the post in which the 2nd party worked for which is no scope for reinstatement of 2nd party in the organization of the 1st party.

Moreover the Hon'ble court kindly appreciate the settled principle of law that grant of a relief of reinstatement with full back wages cannot be granted automatically or as a matter of course when the dispute was responsible for the situation keeping in view all relevant factors, including the mode and manner of appointment, nature of employment, length of service and the activities of the organisation."

7. As discussed hereinabove, based on the aforesaid pleadings of the respective parties the Labour Court framed the following issues:-

*"**I S S U E S***

1) Whether the organisation of the first party management is an Industry as defined under Section 2-J of I.D. Act, 1947?

2) Whether the action of the management of State Labour Institute, Bhubaneswar in terminating the services of Sri Bhismaraj Meher, Choukidar-cum-Peon w.e.f. 1.5.2007 is legal and/or justified?

3) If not, what relief Sri Meher is entitled to?"

8. As it appears, not only list of documents were filed before the learned Labour Court for consideration but documents were also marked by the respective parties as borne from pages- 6 to 12 and pages-18 to 35, the evidence of respective parties appears to be at page-1 to 5 of the workman and pages-13 to 17 of M.W.1 in the record of the Labour Court produced before this Court.

9. Mr. Nayak, learned counsel for Petitioner taking this Court to the plea of the workman apart from reiteration of the plea in the statement of claim and reading the definition at Section 2(J) of the I.D Act, 1947 attempted to demonstrate before this Court that Opposite Party-Establishment is an Industry and therefore, the dispute very much lies within the domain of the Labour Court. In his attempt to buttress the point of law, Mr. Nayak, learned counsel for Petitioner also referred and relied upon the decision of the Hon'ble apex Court in the case of ***Bangalore Water Supply and Sewerage Board*** *Vrs.* ***A. Rajappa & Ors.*** as reported in **AIR 1978 SC 548.** However, on the other hand, Mr. Nayak, learned counsel for Petitioner also chose to refer to another decision rendered by the Hon'ble Supreme Court in ***Physical Research Laboratory*** *Vrs.* ***K.G. Sharma*** as reported in **AIR 1997 SC 1855/(1997) 4 SCC 257.** Reading through the discussions in ***Physical Research Laboratory*** more particularly at paragraph no.7 Mr. Nayak, learned counsel attempted to convince the Court that for the discussion therein in paragraph no.7 of the judgment the sole Opposite Party becomes an Industry and therefore, contended that wrong decision has been rendered by the Labour Court for which the award at Annexure-12 ought to be interfered with and set aside.

10. In his opposition Mr. Dash, learned counsel for sole Opposite Party-Management on reiteration of the stand of the Management and the role of the Management through the documents exhibited and the claim in the written statement in the adjudication process, submitted that for the nature of work opposite party is involved, under no circumstance it can be termed to be an Industry. Mr. Dash, learned counsel for Opposite Party also took this Court to the decision rendered by the Hon'ble apex Court in ***Physical Research Laboratory:*** **(1997) 4 SCC 257** and reading through the whole judgment while claiming that the judgment has clear support to

the Opposite Party, attempted to convince this Court that Opposite Party-Establishment does not come within the definition of Section 2(J) of the Act, 1947 and thus claimed that there has been correct adjudication of the Industrial dispute and therefore, there is no requirement of this Court to interfere in such decision.

11. Considering the rival contentions of the parties as narrated hereinabove in paragraph no.7 this Court finds, the Industrial Adjudicator has framed issue vide issue No.1, which reads as follows:-

> *"1) Whether the organisation of the first party management is an Industry as defined under Section 2-J of I.D. Act, 1947?"*

12. This Court finds, even though the Industrial adjudicator framed issue nos.2 & 3, however, decision on those issues was undoubtedly dependent on the finding involving Issue No.1. Since the award of the Labour Court involving the Issue no.'1' taken note hereinabove is against the workman, there was no need of moving to the other issues. This Court, therefore, finds, unless the Petitioner succeeds on the issue no.1, there would be no attendance to the issue nos.2 & 3 framed by the learned Labour Court. This Court, therefore, proceeds accordingly.

Reading upon the statement of claim of the Petitioner and the opposition of the Management through their written statement as recorded hereinabove and considering the contentions raised by the learned counsel for the parties, this Court finds that the Petitioner claims, the Establishment is an Industrial Establishment, the Management in opposition claims, the Establishment for its activities and role does not come within the ambit of Section 2(J) of the Act, 1947. This Court here finds, keeping in view the claim of the respective parties and based on the

materials and documents exhibited by both the parties, the learned Labour Court at paragraph no.6 of the award came to observe as follows:-

> *"6. It is admitted by the first party management that the second party was engaged as a Choukidar-cum-Peon on contingent basis in the State Labour Institute vide Order No.SLI-11/98 dated 02.01.2006 with a monthly honorarium of Rs.1500/-, but challenged the maintainability of the present proceeding before this Court on the ground that the organisation of the first party management is not coming under the definition of Industry as defined under section 2-J of I.D. Act, 1947. The Deputy Director of the first party organisation who has been examined as M.W.1 at paragraph-3 of his affidavit evidence deposed that the Institution of the first party is a State Government sponsored autonomous body registered under Society Registration Act and a premier Institute in Orissa as well as in the Country which iscreated vide Labour and Employment (Presently E.S.I.) Department of Government of Odisha vide Resolution No.4321 dtd.14.04.1993. At paragraph-4 of his evidence he also deposed that as per the General Council Meeting of the State Labour Institute Orissa held on 21.12.1994 under the chairmanship of Hon'ble Minister Labour and Employment Department, Government of Orissa it adopted the Resolution by accepting the rules and regulations of the State Labour Institute which was adopted vide Order No.4618/LE dtd.22.4.1994. It is also clear from his evidence that the objects of the Institute are to initiate and promote professional activities in the field of labour and related matters and in conformity with the said objectives the Institute undertakes Research Educational and Training Programmes, Orientation Programmes including Publication and Information services in the field of labour, employment and Factories and Boilers. It publishes bulletins namely Shrama Darpana, Prabasi Shramika, Sishu Sampad on quarterly and annual basis. At paragraph-7 of his evidence M.W.1 deposed that Research Work is done in the Institute by eminent Trade Union Leaders, Professors of University, Scholars and Lawyers in resolving problems of Labour related issues like Migrant Labour and Child Labour. It is also clear from his evidence that the organisation of the first party management is not directly or indirectly carrying on any trade or business and its activities*

does not result in to production or distribution of goods and services calculated to satisfy human wants and wishes. It is further clear from his evidence that the organisation of the first party management is giving training to the officers of the Labour Department, Trade Union Leaders and other participants free of costs by utilizing the funds released by the Government and it has no independent source of income. It transpires from his evidence that the Magazines and Bulletins published by the first party organisation are distributed freely for awareness generation of the public and the knowledge acquired as a result of the research carried on by the Institute is not sold but utilized by the Government. M.W.1 also proved Ext.D and E. From the evidence of M.W.1 and the documents relied on and proved by him, it is clear that the organisation of the first party management is not an Industry even though it carries on research systematically with the help of the employees. (Physical Research Laboratory Vrs. K.G. Sharma AIR 1997 SC 1855)."

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13. Since the decision vide **AIR 1997 (SC) 1855 / (1997) 4 SCC 257**, has been heavily relied on by both the parties, this Court here examines the decision relied on by the parties. Going through the decision vide (1997) 4 SCC 257, this Court finds, in paragraph nos.8 to 13 the Hon'ble apex Court came to observe as follows:-

*"**8.** Therefore, the question whether PRL is an "industry" under the I.D. Act will have to be decided by applying the above principles; but, at the same time it has to be kept in mind that these principles were formulated as this Court found the definition of the word "industry" vague and "rather clumsy, vaporous and tall-and-dwarf". Therefore, while interpreting the words "undertaking", "calling" and "service" which are of much wider import, the principle of "noscitur a sociis" was applied and it was held that they would be "industry" only if they are found to be analogous to trade or business. Furthermore, an activity undertaken by the Government cannot be regarded as "industry" if it is done in discharge of its sovereign functions. One more aspect to be kept in mind is that the aforesaid principles are not exhaustive either as regards what can be said to be sovereign functions or as regards the other aspects dealt with by the court.*

9. *In this context, it is useful to refer to Chief Conservator of Forests v. Jagannath Maruti Kondhare [(1996) 2 SCC 293 : 1996 SCC (L&S) 500] wherein this Court, while rejecting the contention that as sovereignty vests in the people the concept of sovereign functions would include all welfare activities on the ground that taking of such a view would erode the ratio in Bangalore Water Supply case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] , observed that "the dichotomy of sovereign and non-sovereign functions does not really exist — it would all depend on the nature of the power and manner of its exercise". After referring to the three traditional sovereign functions namely legislative power, the administration of laws and the exercise of the judicial power and also the decision of the Gujarat High Court in J.J. Shrimali v. District Development Officer [(1989) 1 Guj LR 396] wherein famine and drought-relief works undertaken by the State Government were held not to be an "industry", this Court observed that: "What really follows from this judgment is that apart from the aforesaid three functions, there may be some other functions also regarding which a view could be taken that the same too is a sovereign function."*

10. *In Sub-Divisional Inspector of Post v. Theyyam Joseph [(1996) 8 SCC 489 : 1996 SCC (L&S) 1012] this Court had to consider whether the establishment of Sub-Divisional Inspector of Post at Vaikam is an "industry". Therein this Court has observed that: (SCC pp. 491-92, para 6)*

"... India as a sovereign, socialist, secular, democratic republic has to establish an egalitarian social order under rule of law. The welfare measures partake the character of sovereign functions and the traditional duty to maintain law and order is no longer the concept of the State. Directive Principles of State Policy enjoin on the State diverse duties under Part IV of the Constitution and the performance of the duties are constitutional functions. One of the duties of the State is to provide telecommunication service to the general public and an amenity, and so is an essential part of the sovereign functions of the State as a welfare State. It is not, therefore, an industry."

While taking this view this Court was also influenced by the fact that, the method of recruitment, the conditions of service, the scale of pay and the conduct rules regulating the service conditions of the Extra-Departmental Agents employed by the said establishment are governed by the statutory rules and regulations and that those employees are civil servants. Therefore, while

applying the traditional test, approved by this Court in Bangalore Water Supply case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] to determine what can be regarded as sovereign functions, the change in the concept of sovereign functions of a constitutional government has to be kept in mind. Relying upon these two in Chief Conservator of Forests v. Jagannath Maruti Kondhare [(1996) 2 SCC 293 : 1996 SCC (L&S) 500] and Sub-Divisional Inspector of Post v. Theyyam Joseph [(1996) 8 SCC 489 : 1996 SCC (L&S) 1012] , it was contended by the learned Attorney General that the research work carried on by PRL should be regarded as a sovereign or governmental function.

11. *With respect to research institutes this Court in Bangalore Water Supply [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] has observed as under: (SCC pp. 271-72, para 113)*

"Does research involve collaboration between employer and employee? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more case value, as intangible goods and invaluable services, than discoveries. For instance, the discoveries of Thomas Alva Edison made him fabulously rich. It has been said that his brain had the highest cash value in history for he made the world vibrate with the miraculous discovery of recorded sound. Unlike most inventors, he did not have to wait to get his reward in heaven; he received it munificently on this gratified and grateful earth, thanks to conversion of his inventions into money aplenty. Research benefits industry. 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 inventions and useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit motive, are industries."

12. *PRL is an institution under the Government of India's Department of Space. It is engaged in pure research in space science. What is the nature of its research work is already stated*

earlier. The purpose of the research is to acquire knowledge about the formation and evolution of the universe but the knowledge thus acquired is not intended for sale. The Labour Court has recorded a categorical finding that the research work carried on by PRL is not connected with production, supply or distribution of material goods or services. The material on record further discloses that PRL is conducting research not for the benefit or use of others. Though the results of the research work done by it are occasionally published they have never been sold. There is no material to show that the knowledge so acquired by PRL is marketable or has any commercial value. It has not been pointed out how the knowledge acquired by PRL or the results of the research occasionally published by it will be useful to persons other than those engaged in such type of study. The material discloses that the object with which the research activity is undertaken by PRL is to obtain knowledge for the benefit of the Department of Space. Its object is not to render services to others nor in fact it does so except in an indirect manner.

13. *It is nobody's case that PRL is engaged in an activity which can be called business trade or manufacture. Neither from the nature of its organisation nor from the nature and character of the activity carried on by it, can it be said to be an "undertaking" analogous to business or trade. It is not engaged in a commercial industrial activity and it cannot be described as an economic venture or a commercial enterprise as it is not its object to produce and distribute services which would satisfy wants and needs of the consumer community. It is more an institution discharging governmental functions and a domestic enterprise than a commercial enterprise. We are, therefore, of the opinion that PRL is not an industry even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks that element which would make it an organisation carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs, as ordinarily understood."*

This Court in its considered opinion observes that in para-7 in the above case the Hon'ble apex Court only quoted a portion from the case of ***Bangalore Water Supply and Sewerage Board*** *(supra)* for discussion but

that was not the ultimate finding in the case of ***Physical Research Laboratory (PRL)*** *(supra)*. Thus there is no support to the contention raised by the learned counsel appearing for Petitioner through para-7 therein.

14. This Court here finds, the Establishment involved in ***Physical Research Laboratory (PRL)*** *(supra)* is similar in its activity as Opposite Party herein. This decision even was rendered while keeping in view and applying the principles laid down in the decision of the Hon'ble apex Court in AIR 1978 SC 548. The said decision clearly supports the case of the Opposite Party-Management. For the decision also attempting to take support of the judgment in the case of ***Bangalore Water Supply and Sewerage Board*** *(supra)*, in the first instance this Court records, the validity of the decision in the case of ***Bangalore Water Supply and Sewerage Board*** *(supra)* has been referred to the Larger Bench by the Hon'ble Supreme Court and outcome therein is still awaited. However, reading through the judgment in the case of ***Bangalore Water Supply and Sewerage Board*** *(supra)* this Court from paragraph no.16, 17, 59, 60, 76, 83 & 111 finds as follows:-

> **16**.The test indicated above would necessarily exclude the type of services which are rendered purely for the satisfaction of spiritual or psychological urges of persons rendering those services. These cannot be bought or sold. For persons rendering such services there may be no 'industry', but for persons who want to benefit from the services rendered, it could become an "industry". When services are rendered by groups of charitable individuals to themselves or others out of missionary zeal and purely charitable motives, there would hardly be any need to invoke the provisions of the Industrial Disputes Act to protect them. Such is not the type of persons who will raise such a dispute as workmen or employees whatever they may be doing.
>
> **17**.This leads one on the consider another kind of test. It is that, wherever an industrial dispute could arise between either employers and their workmen or between workmen and workmen, it should be considered an area within the sphere of 'industry' but not otherwise. In other words, the nature of the activity will be determined by the

conditions which give rise to the likelihood of occurrence of such disputes and their actual occurrence in the sphere. This may be a pragmatic test. For example, a lawyer or a solicitor could not raise a dispute with his litigants in general on the footing that they were his employers. Nor could doctors raise disputes with their patients on such a footing. Again, the personal character of the relationship between a doctor and his assistant and a lawyer and his clerk may be of such a kind that it requires complete confidence and harmony in the productive activity in which they may be co-operating so that, unless the operations of the solicitor or the lawyer or the doctor take an organised and systematised form of a business or trade, employing a number of persons, in which disputes could arise between employers and their employees, they would not enter the field of industry. The same type of activity may have both industrial and non-industrial aspects or sectors.

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59.All the indicia of 'industry' are packed into the judgment which condenses the conclusion tersely to hold that 'industries' will cover 'branches of work that can be said to be analogous to the carrying out of a trade or 'business'. The case, read as a whole, contributes to industrial jurisprudence, with special reference to the Act, a few positive facets and knocks down a few negative fixations. Governments and municipal and statutory bodies may run enterprises which do not for that reason cease to be industries. Charitable activities may also be industries. Undertakings, sans profit motive, may well be industries. Professions are not ipso facto out of the pale of industries. Any operation carried on in a manner analogous to trade or business may legitimately be statutory 'industry'. The popular limitations on the concept of industry do not amputate the ambit of legislative generosity in Sec. 2 (j). Industrial peace and the smooth supply to the community are among the aims and objects the Legislature had in view, as also the nature, variety, range and areas of disputes between employers and employees. These factors must inform the construction of the provision.

60.The limiting role of Banerji (AIR 1953 SC 58) must be noticed so that a total view is gained. For instance, 'analogous to trade or business' cuts down 'undertaking', a word of fantastic sweep. Spiritual undertakings, casual undertakings, domestic undertakings, war waging, policing, justicing, legislating, tax collecting and the like are, prima facie, pushed out. Wars are not merchantable, nor justice saleable, nor divine grace marketable. So, the problem shifts to what is 'analogous to trade or business'. As we proceed to the next set of cease we come upon the annotation of other expressions like 'calling' and get to grips with the specific organisations which call for identification in the several appeals before us.

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76.The true test, according to the learned Judge, was concisely expressed by Isaacs J., in his dissenting judgment in the Federated State School Teachers' Association of Australia v. State of Victoria, ((1929) 41 CLR 569) (Aus) (at p. 683 of AIR) :
"The material question is : What is the nature of the actual function assumed is it a service that the State could have left to private enterprise, and if so fulfilled, could such a dispute be 'industrial'?"

Thus the nature of actual function and of the pattern of organised activity is decisive. We will revert to this aspect a little later.

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83.We have extensively excerpted from the vigorous dissent because the same position holds good for India which is emerging from feudal illiteracy to industrial education. In Gandhi's India basic education and handicraft merge and in the latter half of our century higher education involves field studies, factory training, house-surgeoncy and clinical education; and, sans such technological training and education in humanities, industrial progress is self-condemned. If education and training are integral to industrial and agricultural activities, such services are part of industry even if highbrowism may be unhappy to acknowledge it. It is a class-conscious, inegalitarian outlook with an elitist aloofness which makes some people shrink from accepting educational institutions, vocational or other, as industries. The definition is wide, embraces training for industry which, in turn, ensconces all processes of producing goods and services by employer-employee co-operation. Education is the nidus of industrialization and itself is industry.

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111. The result of this discussion is that the solicitors' case (AIR 1962 SC 1080) is wrongly decided and must, therefore, be overruled. We must hasten however, to repeat that a small category, perhaps large in numbers in the muffasil, may not squarely fall within the definition of industry. A single lawyer, a rural medical practitioner or urban doctor with a little assistant and/or menial servant may ply a profession but may not be said to run an industry. That is not because the employees 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. The image of industry or even quasi-industry is one of a plurality of workmen, not an isolated or single little assistant or attendant. The latter category is more or less like personal avocation for livelihood taking some paid or part-time from another. The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and regulation of industrial relations and not to meddle with every little carpenter in a village or

> blacksmith in a town who sits with his son or assistant to work for the customers who trek in. The ordinary spectacle of a cobbler and his assistant or a cycle repairer with a helper, we come across in the pavements of cities and towns, repels the idea of industry and industrial dispute. For this reason, which applies all along the line, to small professions, petty handicraftsmen, domestic servants and the like, the solicitor or doctor or rural engineer, even like the butcher, the baker and the candle-stick maker, with an assistant or without, does not fall within the definition of industry. In regular industries, of course, even a few employees are enough to bring them within S. 2 (f). Otherwise automated industries will slip through the net….."

15. This Court here also takes support of the decision rendered by the Hon'ble apex Court in the case of ***University of Delhi and Anr.*** *Vrs.* ***Ram Nath & Ors.*** : AIR 1963 SC 1873 : (1964) 2 SCR 703 wherein while discussing the case about and merit therein, in para-2, 5, 8, 9 & 19 the Hon'ble Supreme Court observed as follows:-

> "2. Though the question thus raised by these two appeals lies within a narrow compass, its importance is very great. If it is held that the work of imparting education conducted by educational institutions like the University of Delhi is an industry under Section 2(j), all the educational institutions in the country may be brought within the purview of the Act and disputes arising between them and their employees would be industrial disputes which can be referred for adjudication under Section K(1) of the Act and in appropriate cases, applications can be made by the employees under Section 33-C(2). The appellants contend that the Tribunal was in error in giving the definition of the word "industry" under Section 2(j) its widest denotation by adopting a mechanical and literal rule of construction and it is urged that the policy of the Act clearly is to leave education and educational institutions out of the purview of the Act.
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> 5. Does the concept of cooperation between teachers and their institution being treated as similar to the cooperation between labour and capital fit in with the scheme of the Act? That is inevitably the next question which we must consider and in doing so, three definitions will have to be borne in mind. Section 2(g)(1) defines an "employer" as meaning in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department; and Section 2(g)(ii) provides that an employer means in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority. If the work of imparting education is an industry, the University of

Delhi may have to be regarded as an employer within the meaning of Section 2(g). Section 2(j) defines an "industry" as meaning any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. It is unnecessary to comment on this definition, because the precise scope of this definition is the very subject-matter of the dispute which we are considering. That takes us to the definition of "workman" prescribed by Section 2(s). A workman under the said definition means, inter alia, any person, including an apprentice, employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward. It is common ground that teachers employed by educational institutions, whether the said institutions are imparting primary, secondary, collegiate or postgraduate education, are not workmen under Section 2(s), and so, it follows that the whole body of employees with whose cooperation the work of imparting education is carried on by educational institutions do not fall within the purview of Section 2(s), and any disputes between them and the institutions which employed them are outside the scope of the Act. In other words, if imparting education is an industry under Section 2(j), the bulk of the employees being outside the purview of the Act, the only disputes which can fall within the scope of the Act are those which arise between such institutions and their subordinate staff, the members of which may fall under Section 2(s). In our opinion, having regard to the fact that the work of education is primarily and exclusively carried on with the assistance of the labour and cooperation of teachers; the omission of the whole class of teachers from the definition prescribed by Section 2(s) has an important bearing and significance in relation to the problem which we are considering. It could not have been the policy of the Act that education should be treated as industry for the benefit of a very minor and insignificant number of persons who may be employed by educational institutions to carry on the duties of the subordinate staff. Reading Sections 2(g)(j) and (s) together, we are inclined to hold that the work of education carried on by educational institutions like the University of Delhi is not an industry within the meaning of the Act.

8. It is true that like all educational institutions the University of Delhi employs subordinate staff and this subordinate staff do does the work assigned to it but in the main scheme of imparting education, this subordinate staff plays such a minor, subordinate and insignificant part that it would be unreasonable to allow this work to lend its industrial colour to the principal activity of the University which is imparting education. The work of promoting education is carried on by the University audits teachers and if the teachers are excluded from the purview of the Act, it would be unreasonable to regard the work of imparting education as Industry only because its minor, subsidiary and incidental work may seem to partake of the character of service which may fall under Section 2(j).

> 9. It is well known that the University of Delhi and most other educational institutions are not formed or conducted for making profit; no doubt, the absence of profit motive would not take the work of any institution outside Section 2(j) if the requirements of the said definition are otherwise satisfied. We have referred to the absence of profit motive only to emphasise the fact that the work undertaken by such educational institutions differs from the normal concept of trade or business. Indeed, from a rational point of view, it would be regarded as inappropriate to describe education even as a profession. Education in its true aspect is more a mission and a vocation rather then a profession or trade or business, however wide may be the denotation of the two latter words under the Act. That is why we think it would be unreasonable to hold that educational institutions are employers within the meaning of Section 2(g), or that the work of teaching carried on by them is an industry under Section 2(j), because, essentially the creation of a well-educated, healthy young generation imbued with a rational progressive outlook on life which is the sole aim of education, cannot at all be compared or assimilated with what may be described as an industrial process. Therefore, we are satisfied that the University of Delhi and the Miranda College for Women run by it cannot be regarded as carrying on an industry under Section 2(j), and so, the applications made by the respondents against them under Section 33-C (2) of the Act must be held to be incompetent.
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> 19. In the result, the appeals are allowed, the order passed by the Industrial Tribunal are set aside and the petitions filed by the respondents under Section 33-C(2) of the Act are dismissed. There would be no order as to costs."

16. It is, in the above background of the matter, in view of the legal position that stands as of now, considering the pleadings and contentions of the respective parties through their statement of claim and written statements and looking to the exhibits in the course of industrial adjudication, this Court finds, the decision in (1997) 4 SCC 257, referring to the decision in the case of ***Bangalore Water Supply and Sewerage Board*** *(supra)* does not support the case of the Petitioner. It rather supports the case of Opposite Party herein thereby supporting the impugned award herein. This apart, the other two decisions taken note hereinabove have also clear support to the case of Opposite Party and the findings of Labour Court are thus well supported by the propositions of law settled through all the above decisions.

17. This Court, in the above background of the matter finds, the adjudication of the matter by the Labour Court to be just and proper in refusing to entertain the reference, thereby requiring no interference by this Court in such award.

18. Writ Petition thus stands dismissed. However, there shall be no order as to costs.

(Biswanath Rath)
Judge

M.S. Sahoo, J:-I agree

(M.S. Sahoo)
Judge

Orissa High Court, Cuttack.
The 18th day of May, 2023//
Ayaskanta Jena, Senior Stenographer