

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No.732 of 2011**

State of Chhattisgarh Through the Civil Surgeon, District Hospital,
Tatiband-Raipur (CG)

---- Petitioner

Versus

1. Nemi Chand Sharma, S/o Late Ram Kumar Sharma, R/o Near Gurudwara Shyam Nagar, Raipur (CG)
2. The Managing Director, Chhattisgarh Infrastructure Development Corporation (CIDC), Shastri Chowk, Raipur (CG)

---- Respondents

For Petitioner	:	Mr.Dheeraj Wankhede, G.A.
For Respondent No.1	:	Mr.Vinod Deshmukh, Advocate
For Respondent No.2	:	Mrs.Anju Ahuja, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

24/7/2017

1. Impugning legality, validity and correctness of the order passed by the Industrial Court, Raipur setting aside the order of the Labour Court under the Payment of Wages Act, Raipur, this writ petition has been filed.
2. Learned Counsel for the petitioner/State would submit that the Labour Court has rejected the application filed by respondent No.1, whereas it has been allowed by the Industrial Court. He would further submit that respondent No.1 was allegedly working in the District Hospital and the District Hospital is not an 'industry' within the meaning of Section 2 (f) of the Industrial Disputes Act, 1947 (hereinafter called as 'Act of 1947') as the correctness of judgment of the Supreme Court in the matter of **Bangalore Water Supply & Sewerage Board Vs. A. Rajappa and others**¹ has been doubted and it has been referred to

¹ (1978) 2 SCC 213

the larger Bench and it is pending consideration before the larger Bench, therefore, this be kept pending till reference made in **Bangalore Water Supply & Sewerage Board** (supra) is answered finally by the larger Bench.

3. On the other hand, learned counsel for respondent No.1 would support the impugned order.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
5. In the matter of The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi² the Supreme Court has held that hospital is not an 'industry' within the meaning of Section 2(j) of the Act of 1947.
6. The aforesaid judgment was overruled by seven-Judge Bench in the matter of **Bangalore Water Supply & Sewerage Board** (supra) in which hospital has held to be an 'industry' within the meaning of Section 2(f) of the Act of 1947.
7. The principle of law laid down in **Bangalore Water Supply & Sewerage Board** (supra) was ultimately referred to the larger Bench in the matter of State of U.P. Vs. Jai Bir Singh³ doubting the correctness of that decision and the matter was placed before seven-Judge Bench and seven-Judge Bench in the matter of State of Uttar Pradesh Vs. Jai Bir Singh⁴ has referred the matter to the nine-Judge Bench to answer the question referred in the reference order dated 5.5.2005. It was observed as under:-

² 1970 (1) SCC 735

³ (2005) 5 SCC 1

⁴ (2017) 3 SCC 311

“2. We order accordingly. The papers be now placed before the Chief Justice for constituting an appropriate nine-Judge Bench to answer the questions raised in the reference order dated 5-5-2005 passed by the five-judge Bench in State of U.P. v. Jai Bir Singh.”

8. In Jai Bir Singh (supra) and State of Maharashtra and another Vs. Sarva Shramik Singh, Sangli and others⁵, the Supreme Court has held that the principle of law laid down in Bangalore Water Supply and Sewerage Board (supra) is binding until reference is answered and held that the determination of the present pending industrial dispute cannot be kept undecided until the judgment of the larger Bench is delivered. It was observed as under:-

“27.It is, however, contended on behalf of the appellant that the said undertaking was being run by the irrigation department of the first appellant, and the activities of the irrigation department could not be considered to be an “industry” within the definition of the concept under Section 2(j) of the I.D. Act. As noted earlier, the reconsideration of the wide interpretation of the concept of “industry” in Bangalore Water Supply and Sewerage Board (supra) is pending before a larger bench of this Court. However, as of now we will have to follow the interpretation of law presently holding the field as per the approach taken by this Court in State of Orissa v. Dandasi Sahu (supra), referred to above. The determination of the present pending industrial dispute cannot be kept undecided until the judgment of the larger bench is received.”

9. In Ashok Sadarangani and another Vs. Union of India and others⁶ the Supreme Court relying upon the judgment of **Harbhajan Singh Vs. State of Punjab⁷** has further held that the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. It was observed as under:-

“29. As was indicated in Harbhajan Singh case (supra), the pendency of a reference to a larger Bench, does not

5 (2013) 16 SCC 16

6 (2012) 11 SCC 321

7 (2009) 13 SCC 608

mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in *Gain Singh Vs. State of Punjab*⁸ need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.”

10. In view of the principle of law laid down by the Supreme Court in the aforesaid judgments (supra), this Court is of the opinion that decision of the Supreme Court in **Bangalore Water Supply & Sewerage Board** (supra) holding the hospital to be an “industry” can be followed by this Court while adjudicating the dispute that hospital is an 'industry' within the meaning of Section 2(f) of the Act of 1947. It is held accordingly.
11. Mr.Dheeraj Wankhede, learned counsel for the petitioner, would submit that there is delay of one year in filing the application.
12. A bare perusal of the entire order passed by the Industrial Court would show that application has been decided on merits after considering the rival submissions made by the parties. The Industrial Court has assigned sufficient and valid reasons in paragraph 13 of the impugned order for holding the application of respondent No.1 to be within limitation. After hearing learned counsel for the parties and after going through the record, I do not find any perversity or jurisdictional error in the impugned order in holding the application of respondent No.1 to be within limitation and granting him wages.
13. For the foregoing reasons, the writ petition deserves to be and is accordingly dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-