

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.360 OF 2007

M/s Shantivan-II Co.Op.Hsg. Society ... Petitioner
V/s
Smt. Manjula Govind Mahida and anr. ... Respondents

**WITH
WRIT PETITION NO.361 OF 2007**

M/s Shantivan-II Co.Op.Hsg. Society ... Petitioner
V/s
Smt. Ratnprabha Shantaram Rane and anr. ... Respondents

Mr.V.P.Vaidya for the Petitioner.
Ms.Seema K. Chopda for Respondent No.1 in WP No. 360 of 2007.

**CORAM : S.C.GUPTE, J.
DATE : JUNE 21, 2018.**

P.C. :

1. Rule.
2. Heard learned counsel for the parties. These Petitions challenge awards passed by the Labour Court at Mumbai in favour of the first Respondents in both petitions, in a reference made to it under Section 10 of the Industrial Disputes Act, 1947. The controversy in the petitions is in a narrow compass. The petitioner is a co-operative housing society, who had engaged both first Respondents as sweepers. Their services were terminated later.

Being aggrieved, they raised an industrial dispute and upon failure of conciliation, the same was referred by the State Government to the Labour Court for adjudication. It was contended by the petitioner-society that the petitioner-society was not an 'industry' as defined under Section 2(j) of the Industrial Disputes Act. The Labour Court, however, rejected the petitioner's contention and held that it was an industry; primarily because the court was of the view that it was duly proved before it that the petitioner-society had let out a part of its terrace for installation of telephone transmission tower and was earning income from the licensee. The court held that since the petitioner had indulged in a commercial activity of letting out its premises to outsiders for whom services had to be rendered by the Respondents such as parking of vehicles and other services, this activity made the petitioner an 'industry' within the meaning of Section 2(j) of the Act.

3. What amounts to an industry is succinctly laid down by the Supreme Court in the case of **Banglore Water Supply and Sewerage Board Vs. A. Rajappa and ors.**¹ The observations of

1 1978(ii) SCC Page 213

the court on the subject are quoted below:

“140. 'Industry', as defined in Section 2(j) and explained in *Banerji* (supra), has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and /or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale prasad or food), 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 and other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

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

4. The expression “Undertaking” appearing in the definition of “Industry” under Section 2(j) was also explained by the Supreme Court in the following words:-

“(a) 'Undertaking' must suffer a contextual and

associational shrinkage as explained in *Banerji* (supra) and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be 'industry' provided the *nature of the activity*, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, callings and services, adventures 'analogous to the carrying on the trade or business'. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.”

5. To decide whether, going by its activities, the undertaking would be an industry or not in case where there are complex activities carried out by it, the Supreme Court in **Bangalore Water Supply and Sewerage Board** case laid down the dominant nature test in the following words:-

“143. *The dominant nature test:*

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom

are not 'workmen' as in the *University of Delhi* case (supra) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur* (supra), will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in a departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.”

6. These broad principles laid down by the Supreme Court in **Banglore Water Supply** case were applied by it to the particular case of a housing society in **Som Vihar Apartment Owners'**

Housing Maintenance Society Ltd. Vs. Workmen C/o Indian Engg. & Genl. Mazdoor¹. That was a case where the appellant before the court was an entity which was said to be an association of apartment owners, rendering services to the latter. It was contended before the Court that the employees were not rendering personal services to the apartment owners directly but through the society; that they received salary and emoluments from the society; that they worked under the direct control and supervision of the society; and therefore, the society's activities must be characterized as activities of an industry. It would, accordingly, constitute an industry as understood by the Supreme Court in **Banglore Water Supply** case. The Supreme Court noticed the distinction between such classes of workmen as domestic servants who render personal service to their masters and those covered under the definition under Section 2(j) of the Industrial Disputes Act, 1947 as considered in **Banglore Water Supply** case. The court noticed that services rendered by domestic servants purely in a personal or domestic matter or in a casual way would fall outside the definition. The

1 2002(9)SCC Page 652

whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and such resolution is not meant to meddle with every carpenter or blacksmith or cobbler or cycle repairer who comes outside the idea of industry and industrial dispute. The court noticed that this rationale, which applied all along the line to small professions like that of domestic servants, would also apply to those who were engaged by a group of flat owners for rendering services, even if that group was not amorphous but crystallized into an association or a society. The court held that when personal services are rendered to members of a society and the society is constituted only for the purposes of those members so as to engage employees for such services, its activities should not be treated as industry nor are the employees to be termed as workmen. The court, in the premises, held that the apartment owners' housing society, who was the appellant before it, was not an industry.

7. This law should have ordinarily put an end to any speculation whether or not a co-operative housing society like the one we are concerned with in the present petition is an industry. A housing society, after all, is a society formed by and

for individual flat owners, who in real terms own the property and who form themselves into a society so that services for maintenance and upkeep of the property, etc. could be availed of by them in a more systematic manner. Such society, in an ordinary case, can never be termed as an industry. Even in the present case, learned counsel for the Respondent does not dispute this position. It is, however, submitted, and that is what has found favour with the Labour Court, is that this society does not merely exist for rendering services to its members, but infact carries on a commercial activity by hiring out a part of its terrace to an outside agency and earns income by way of licence fees or charges from this outside agency and to the extent that it does so, it must be treated as an industry. The submission has no force. What one has to consider in a case like this, that is to say, where there is a complex of activities, some of which may qualify the undertaking as an industry and some would not, what one has to consider is the predominant nature of services or activities. If the predominant nature is to render services to its own members and the other activities are merely an adjunct, by the true test laid down in **Banglore Water Supply**, the undertaking

is not an industry. It cannot even possibly be suggested in the present case that the predominant nature of services rendered by the petitioner-society here is hiring out of its terrace for the purposes of erection of a telephone tower. It is but a minor part of its entire activity, a mere adjunct to its predominant activity, which is to enable the members to organize themselves better for availing personal services. The organized activity in its case does not possess the triple elements mentioned in the **Bangalore Water Supply** case. Considering the overall purpose of existence of the society and the nature of services rendered by it, by applying the dominant nature test succinctly laid down by the Supreme Court in **Bangalore Water Supply**, it is but a foregone conclusion that the society is not an industry in any true sense of the word as applied under Section 2(j) of the Act.

8. The impugned order of the Labour Court, accordingly, contains a fundamental error of jurisdiction and cannot be sustained.

9. Whereas the conclusion in a matter like this is writ large and does not admit of any more debate, this court would still like the petitioner society to consider sympathetically the case of the

respondents who have put in a number of years of dedicated service to the petitioner and make a monetary concession only by grace for the respondents. Mr.Vaidya, learned counsel appearing for the petitioner graciously leaves this aspect to the court. The petitioner-society has deposited sums of Rs.1,00,000/- and Rs.1,50,000/- in Writ Petition Nos.360 of 2007 and 361 of 2007, respectively, as and by way of a condition of interim relief. The amounts have been invested by the Prothonotary and Senior Master in fixed deposits. This court is of the view that the amounts, alongwith accrued interest, may go to the respective first respondents in these petitions as and by way of ex-gratia payments in overall interest of justice, though the complaints of these respondents essentially fail on a matter of law.

10. Accordingly, Rule is made absolute and both petitions are allowed. The Prothonotary shall, however, allow the first respondents in both petitions to withdraw the respective amounts deposited by the petitioner in these petitions together with accrued interest.

(S.C.GUPTE, J.)