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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.04.2022
Pronounced on : 15.06.2022

Coram

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.42419 and 42524 of 2006
and M.P. Nos.1 to 1 of 2006, 1, 2 of 2007 and 2 of 2006

Cause title in W.P.No.42419 of 2006:

The Scientific Officer (SF).
Head, Water and Steam Chemistry Laboratory,
BARC Facilities,
Department of Atomic Energy,
Kalpakkam-603 102. ... Petitioner

Vs.

1. Shri.P.Sukumar,
   C/o, Rukmani Sukumar,
   No.493, Quaid-e-milat Street,
   RMI Nagar, Pudupattinam,
   Kalpakkam-603 102.

2. The Industrial Tribunal,
   Tamil Nadu, Chennai-600 104. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari or any other appropriate writ or order or direction in the nature of a writ calling for the records pertaining to common order dated 03.04.2006 in I.D.Nos.62/1992 and 63/1992 on the file of the Industrial Tribunal, Tamil Nadu, Chennai and quash the same and thus render justice.

Cause title in W.P.No.42524 of 2006:

The Scientific Officer (SF).
Head, Water and Steam Chemistry Laboratory,
BARC Facilities,
Department of Atomic Energy,
Kalpakkam-603 102. ... Petitioner

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Vs.

1. Shri.V.Thiagrajan,
   Kunnathur Village,
   Manamai Post,
   Kalpakkam- 603 102.

2. The Industrial Tribunal,
   Tamil Nadu, Chennai-600 104. ...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari or any other appropriate writ or order or direction in the nature of a writ calling for the records pertaining to common order dated 03.04.2006 in I.D.Nos.62/1992 and 63/1992 on the file of the Hon'ble Industrial Tribunal, Tamil Nadu, Chennai and quash the same and thus render justice.

For Petitioner in both W.Ps. : Mr.P.G.Santhosh Kumar

For Respondent 1 in both W.Ps. : Mr.K.M.Ramesh

For Respondent 2 in both W.Ps. : Tribunal

COMMON ORDER

The short question that arises for consideration in both these writ petitions is whether the petitioner would constitute an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, and thus the petitioner ought to comply with the provisions of Section 25F of the Industrial Disputes Act, 1947, while retrenching the 1st respondent in the above writ petitions. A common order is passed in both the writ petitions as the petitioner is aggrieved by the common order of the Tribunal in I.D.Nos. 62/1992 and 63/1992 dated 03.04.2006 and the question that is raised in both the writ petitions is identical. The 1st respondent in both the writ petitions are workmen, their stands/ arguments are again common.

2. At the outset, it may be relevant to note that this is the second round of litigation. Prior to the present writ petitions, the common order of the Tribunal in I.D.Nos.62/1992 and 63/1992 dated 01.04.2006, was challenged by way of writ petitions in W.P.Nos.10597 and 10598 of 1997 which was remitted back to the Tribunal to give a specific finding as to whether the petitioner Department/Unit is an "Industry" within the

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meaning of Section 2(j) of the Industrial Disputes Act, 1947.

3. Pursuant to the above order of this Court, the Tribunal passed the impugned order holding that the petitioner would fall within the meaning of "Industry" in terms of Section 2(j) of the Industrial Disputes Act, 1947. It is this order of the Tribunal which has been challenged by the petitioner in the present writ petitions on the premise the petitioner would not fall within the definition of Section 2(j) of the Industrial Disputes Act, 1947.

4. Before proceeding further, it may be relevant to briefly set out the relevant nature of the petitioner's activities/functions:

i) Bhabha Atomic Research Centre is a premier multi - disciplinary Nuclear Research Centre of India having excellent infrastructure for advanced Research and Development with expertise covering the entire spectrum of Nuclear Science and Engineering and is involved in research activities relating to the full nuclear fuel cycle that includes design of nuclear reactors and control system reactors.

ii) Head, Water and Steam Chemistry Laboratory, i.e., Petitioner herein is a constituent laboratory of the Bhabha Atomic Research Centre, Mumbai (hereinafter referred to as "BARC"). This Laboratory, located at Kalpakkam, was established in the year 1984. A major objective in setting up the laboratory was to develop competence and infrastructure to comprehensively address issues related to aspects of water chemistry, primary, secondary, tertiary and auxiliary cooling systems of power reactors. This unique laboratory was created to cater to the requirement of the entire Department of Atomic Energy, which is the first and only one of its kind in the country that carries out specialized R&D work on all aspects of cooling water chemistry and biology of nuclear reactors.

The mandate of this laboratory covers the entire spectrum of coolant circuits and addresses aspects such as material compatibility, steam generator integrity, radioactivity transport, bio - fouling, bio - corrosion and environmental effects of steam condenser discharges.

iii) The petitioner's Laboratory serves as the nodal laboratory for a major multi-institutional project on thermal ecology, organized to study the impact of thermal and chemical stress caused by condenser effluents on coastal marine organisms.

I must add that the activities mentioned above are not

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exhaustive of Head,Water and Steam Chemistry Laboratory i.e., petitioner herein. The petitioner is an integral part of the research activities relating to the full nuclear fuel cycle carried out in BARC. In other words, the activities in BARC are inter-related and cannot be severed from other activities of its constituent laboratories.

5. Findings of the Tribunal :-

It may be relevant to set out briefly the findings of the Tribunal, which is the subject matter of challenge in these writ petitions. The Tribunal had concluded that the petitioner department/unit would constitute an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, and relied upon the following features/ aspects to arrive at the said conclusion:-

a. The petitioner's product is marketable and is being marketed. The product of the petitioner i.e., research work/ result /data is delivered to Indira Gandhi Centre for Atomic Energy at Kalpakkam (hereinafter referred to as "IGCAR") which in turn generates electricity which is delivered to the Public Consumer on charges. The petitioner's research work/ result/ data is thus integrally connected to generation of electricity which is goods and being marketed and connected to trade/ business.

b. The research activities are carried out by regular staff of the laboratory in collaboration with nearby Universities and Colleges. The Laboratory has served as an interface between Universities and the Board of Research in Nuclear Science (BRNS), which is the funding arm of Department of Atomic Energy that supports Universities. Students from the above institutions are provided facilities by the laboratory for carrying out research work leading to Ph.D.

6. Submissions of the learned counsel for the petitioner:-

The above order of the Tribunal has been challenged by the petitioner on the premise, that the Tribunal had erred in holding that the petitioner would fall within the meaning of "Industry" in terms of Section 2(j) of the Industrial Disputes Act, 1947 inter alia on the following grounds:

a. The definition of "Industry" excludes any activity of the Government which qualifies as "sovereign function" of the Government. The activity of the petitioner is not an economic venture or a commercial enterprise that satisfies the wants and needs of a consumer. To the contrary, the scientific and

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technological advancements are used for the progress of the nation and thus a sovereign function, thereby would fall within the exclusion/ exception.

b. That no product is generated as a result of the research activity carried out by the petitioner and generation of electricity is only done/carried out by Nuclear Power Corporation of India, a Public Sector undertaking.

c. The Ministry of Labour, Government of India had clarified that the Bhabha Atomic Research Centre is not an "Industry" with regard to the matters pertaining to social security and welfare of labour and enforcement of labour laws vide communication dated 30.11.1985 and 23.03.2001.

It was thus submitted that the order of the Tribunal insofar as it finds that the petitioner would constitute an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 is erroneous and unsustainable.

7. Submission of the counsel for the 1st Respondent:

a. To the contrary, it is submitted by the learned counsel for the 1st respondent that the order of the Tribunal does not warrant interference as its findings are in accordance with the tests laid by the Hon'ble Supreme Court as to what would constitute an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. It is submitted by the learned counsel for the respondents that it is undisputed that the respondents had completed 240 days of work in a year and Section 25F of the Act has not complied with while retrenching the petitioner. Failure to comply with Section 25 F of the Industrial Disputes Act, 1947, is fatal to the validity of the order of retrenchment.

b. That the question as to whether the Research Institute/ department/ unit would fall within the meaning of Section 2(j) of the Industrial Disputes Act as an Industry stands resolved by the Constitutional Bench Judgment in the case of Bangalore Water Supply and Sewerage Board reported in (1978) 2 SCC 213.

c. That submissions of the petitioner that the petitioner is discharging sovereign functions and would thus fall within the exceptions/ exclusion carved out of Section 2(j) of the Industrial Disputes Act, 1947, is based on a misconception of scope and concept of "sovereign functions".

d. That the petitioner's research work was used for generation of electricity, which in turn was sold to consumers and thus the research activity of the petitioner was integrally

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connected and had a commercial element. The submission of the petitioner that it would not constitute an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, cannot be sustained.

8. Before proceeding further, it may be relevant to set out briefly the factors/ test laid down by the Hon'ble Supreme Court in Bangalore Water Supply "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, which reads as under:

> "140. "Industry', as defined in Section 2(j) and explained in Banerji, 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 or 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."

9. The order of the Tribunal is under challenge only on the premise that the activity/ functions of the petitioner would constitute "sovereign functions" and the other aspects/ tests laid down by the Hon'ble Supreme Court is not seriously disputed.

a. Reference to Larger Bench – Law Laid Down in Bangalore Water Supply – Continues to be binding:

It was submitted by the learned counsel for the petitioner that the correctness of the view expressed by the Seven-Judges Constitution Bench in Bangalore Water Supply and Sewerage Board reported in (1978) 2 SCC 213 has been doubted and referred to a Larger Bench in State of U.P. vs. Jaybir Singh reported in (2005) 5 SCC 1 and thus the said decision cannot be relied upon. The above submission does not have any merit for mere reference

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of a decision to a larger bench would not result in the said decision loosing its precedential value unless or until the reference is answered. In this regard, is may be relevant to refer the following judgments:

i) S. Bhati v. National Insurance Co. Ltd., reported in (2019) 12 SCC 248

> "10. The learned counsel further submitted on the alternative plea that the decision in Mukund Dewangan [Mukund Dewangan v. Oriental Insurance Co. Ltd., (2017) 14 SCC 663] has been reserved for reconsideration by a larger Bench in Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi [Bajaj Alliance General Insurance Co. Ltd. v. Rambha Devi, (2019) 12 SCC 816] by a two-Judge Bench of this Court on 3-5-2018.
>
> 11. The law which has been laid down by a three-Judge Bench of this Court in Mukund Dewangan [Mukund Dewangan v. Oriental Insurance Co. Ltd., (2017) 14 SCC 663] binds this Court. As a matter of judicial discipline, we are duty-bound to follow that decision which continues to hold the field."

ii) State of Orissa v. Dandasi Sahu, reported in (1988) 4 SCC 12 :

> "4. In that view of the matter, we think that the pendency of this point before the larger Bench should not postpone the adjudication and disposal of this appeal in the facts of this case. The law as it stands today is that awards without reasons are not bad per se. Indeed, an award can be set aside only on the ground of misconduct or on an error of law apparent on the face of the award. This is the state of law as it is today and in that context the contention that the award being an unreasoned one is per se bad, has no place on this aspect as the law is now. This contention is rejected."

iii) State of Maharashtra v. Sarva Shramik Sangh, reported in (2013) 16 SCC 16 :

> "27. ..... As noted earlier, the reconsideration of the wide interpretation of the concept of "industry" in Bangalore Water Supply and Sewerage Board [Bangalore Water Supply and Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 : 1978 SCC (L&S) 215] 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

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taken by this Court in State of Orissa v. Dandasi Sahu [(1988) 4 SCC 12] , referred to above. The determination of the present pending industrial dispute cannot be kept undecided until the judgment of the larger Bench is received."

A reading of the above judgments would show that the above submission lacks merit and as long as the reference is answered and the reasoning of the Seven-Judges Constitution Bench in Bangalore Water Supply and Sewerage Board reported in (1978) 2 SCC 213 is over turned the test laid down therein would continue to bind.

b. Whether petitioner discharges "Sovereign Functions" and thus excluded from the definition of "Industry" for the purposes of Industrial Disputes Act, 1947:

It is submitted by the learned counsel for the petitioner that the activity of the petitioner are in the nature of sovereign functions and thus would fall within the exclusion/exception carved out under Section 2(j) of the Industrial Disputes Act, 1947. There is no doubt that an Unit/ Department discharging Sovereign function is kept out of the purview of Industrial Disputes Act, 1947, as it would not qualify as an "Industry" for the purposes of Indutrial Disputes Act, 1947.

It may thus be necessary to understand the scope and concept of "sovereign function". It is not every governmental action which would constitute sovereign functions but it is confined/ limited to such of those activities that are inherent or inalienable.

To understand the judicial perspective as to the nature and concept of "Sovereign Function" it may be relevant to refer to the following judgments of the Hon'ble Supreme Court:

(i) Synthetics and Chemicals Ltd. v. State of U.P., reported in (1990) 1 SCC

> "56. ……The sovereign power is plenary and inherent in every sovereign State to do all things which promote the health, peace, morals, education and good order of the people. Sovereignty is difficult to define...."
>
> (emphasis supplied)

(ii) Balmer Lawrie & Co. Ltd. v. Partha Sarathi Sen Roy, (2013) 8 SCC 345 : (2013) 3 SCC (Civ) 804 : (2014) 1 SCC (L&S) 114 : 2013 SCC OnLine SC

> "18. Often, there is confusion when the concept of

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sovereign functions is extended to include all welfare activities. However, the court must be very conscious whilst taking a decision as regards the said issue, and must take into consideration the nature of the body's powers and the manner in which they are exercised. What functions have been approved to be sovereign are the defence of the country, the raising of armed forces, making peace or waging war, foreign affairs, the power to acquire and retain territory, etc. and the same are not amenable to the jurisdiction of ordinary civil courts. (VideN. Nagendra Rao & Co.v.State of A.P. [(1994) 6 SCC 205 : 1994 SCC (Cri) 1609 : AIR 1994 SC 2663] and Chief Conservator of Forestsv.Jagannath Maruti Kondhare[(1996) 2 SCC 293 : 1996 SCC (L&S) 500 : AIR 1996 SC 2898])

.....

20. Every governmental function need not be sovereign. State activities are multifarious. Therefore, a scheme or a project, sponsoring trading activities may well be among the State's essential functions, which contribute towards its welfare activities aimed at the benefit of its subjects, and such activities can also be undertaken by private persons, corporates and companies. Thus, considering the wide ramifications, sovereign functions should be restricted to those functions, which are primarily inalienable, and which can be performed by the State alone. Such functions may include legislative functions, the administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon, etc. Therefore, mere dealing in a subject by the State, or the monopoly of the State in a particular field, would not render an enterprise sovereign in nature. (Vide Agricultural Produce Market Committee v. Ashok Harikuni [(2000) 8 SCC 61 : AIR 2000 SC 3116] ,State of U.P.v.Jai Bir Singh [(2005) 5 SCC 1 : 2005 SCC (L&S) 642] ,Assam Small Scale Industries Development Corpn. Ltd. v. J.D. Pharmaceuticals[(2005) 13 SCC 19 : AIR 2006 SC 131] and Haryana State Industrial Development Corpn.v.Hari Om Enterprises [(2009) 16 SCC 208 : AIR 2009 SC 218] .)"

(emphasis supplied)

(iii) Bangalore Water Supply and Sewerage Board reported in (1978) 2 SCC 213:

"50.The Court proceeded to carve out the negative factors which, notwithstanding the literal width of the language of the definition, must, for other compelling reasons, be kept out of the scope of

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> industry. For instance, sovereign functions of the State cannot be included although what such functions are has been aptly termed "the primary and inalienable functions of a constitutional government".....
>
> 51.Although we are not concerned in this case with those categories of employees who particularly come under departments charged with the responsibility for essential constitutional functions of government, it is appropriate to state that if there are industrial units severable from the essential functions and possess an entity of their own it may be plausible to hold that the employees of those units are workmen and those undertakings are industries.....
> ..... The Court ultimately drew a line at the point where the regal or sovereign activity of the Government is undertaken and held that such activities of the Government as have been pithily described by Lord Watson as "the primary and inalienable functions of a constitutional Government", could be stated negatively as falling outside the scope of Section 2(j)."
>
> (emphasis supplied)

A reading of the above judgments would suggest that the following have been found as some of the essential features of Sovereign functions:

a. Sovereign power is plenary and inherent in every sovereign State.

b. Sovereign functions are to be restricted to those which are primarily inalienable and which can be performed by State alone and that mere dealing in a subject by the State, a monopoly in a particular field would not render the activity/enterprise sovereign in nature.

c. Every Governmental function is not necessarily sovereign.

d. Sovereignty/sovereign functions is difficult to define.

e. The nature of the bodies power and the manner in which the same is exercised must be taken into consideration.

f. What is normally treated or approved to be sovereign functions are the defence of the country, raising of armed forces, making peace of various region, foreign affairs, power to acquire and retain territory and the same are not amenable to jurisdiction of the ordinary civil courts.

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10. Having referred to the features of sovereign function, it appears that the crucial test for determining whether a function is sovereign or otherwise is the "test of inalienability". Now, applying the above "test of inalienability" to the facts of the present case, it appears that the nature of work carried out by the petitioner may not satisfy the "test of inalienability" laid down by the Hon'ble Supreme Court to determine a particular function as sovereign, as would be evident from the following:

i) The Atomic Energy Act, 1962 - Statutory Indication that the function of the petitioner fails the "test of inalienability":

Reliance was sought to be placed by the petitioner on the Atomic Energy Act to suggest that the production, development and use of Atomic energy is governed by the said Act and it was thus suggested that the functions of the petitioner is sovereign. To appreciate the merit or its absence in above submission, it may relevant to refer to the following provisions of the Atomic Energy Act, 1962:

"2. Definitions and interpretation.

(1) In this Act, unless the context otherwise requires,

(a).....

(b) ....

[(b) "Government company" means a company in which not less than fifty – one per cent. of the paid up share capital is held by the Central Government;

.....

3. General powers of the Central Government,

Subject to the provisions of this Act, the Central Government shall have power

(a) to produce, develop, use and dispose of atomic energy [either by itself or through any authority or corporation established by it or a Government company] and carry out research into any matters connected therewith ;

(b)...

(c)...

(d)...

(e)...

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(f) to provide for the production and supply of electricity from atomic energy and for taking measures conducive to such production and supply and for all matters incidental thereto [either by itself or through any authority or corporation established by it or a Government company];

.....

22. Special provision as to electricity:

(1) Notwithstanding anything contained in the Electricity (Supply) Act, 1948 (54 of 1948), the Central Government shall have authority

(a) to develop a sound and adequate national policy in regard to atomic power, to co-ordinate such policy with the Central Electricity Authority and the State Electricity Boards constituted under sections 3 and 5 respectively of that Act and other similar statutory corporations concerned with the control and utilisation of other power resources, to implement schemes for the generation of electricity in pursuance of such policy and to operate [,either by itself or through any authority or corporation established by it or a Government company,] atomic power stations in the manner determined by it in consultation with the Boards or Corporations concerned, with whom it shall enter into agreement regarding the supply or electricity so produced.."

(emphasis supplied)

A reading of the above provisions cumulatively would suggest that though there is no doubt of the intent on the part of the legislature intended to regulate and control the development, use and disposal of atomic energy. However, it appears that it was not even meant to completely excluded private participation. This would be evident from the fact that Section 3 of the Act while providing for production, development, use and disposal of atomic energy provides that the same shall be carried out either by the Central Government itself or through any authority or corporation established or by the "Government Company". Again, a reading of Section 2 (f) of the Act which deals with production and supply of electricity from Atomic Energy and Section 22 of the said Act which is the special provision relating to electricity also provides that the same shall be carried out by the Central government itself or through any authority or corporation established or by the Government Company.

Importantly, the expression "Government company" is defined under Section 2(1)(bb) of the Atomic Energy Act, 1962, to mean a

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company in which not less than 51% paid up share capital is held by the Central Government. The above would indicate that private participation is not excluded. This in my view is an indicator that the submission by the petitioner that the petitioner is discharging "sovereign function" is unsustainable as it may fail the test of inalienability.

Atomic Energy Act, 1962, imposes restrictions and prohibitions with regard to development, control and use of Atomic Energy. Mere fact that there are statutory regulations or even prohibitions in force may not by itself be an indicator of the fact that the restricted/prohibited activity/ functions discharged are sovereign in nature. This would be clear if one bears in mind that "Sovereign Function" is inherent and inalienable, to the contrary restriction and prohibitions fall within the realm of Policy which is framed by the Executive or legislature and the same is an evolving concept. The need for a statutory restriction or prohibition is in view of the fact that it is not inherently inalienable which militates against the concept of Sovereign Function which must pass the muster of inalienability.

ii) Government's Position on Private Participation:

It may also be relevant to indicate that the Minister of State for Science and Technology and Earth Sciences (Independent Charge), PMO, Personnel, Public Grievances and Pensions and Parliamentary Affairs, had in response to unstarred question No:413 on Private Sector participation in Nuclear Power Sector had stated as under, dated 24.02.2010:

> "The Atomic Energy Act, 1962 allows the Central Government to produce, develop, use and dispose of atomic energy either by itself or through any authority or corporation established by it or a Government Company. As of today Nuclear Power Corporation of India Limited (NPCIL) & Bharatiya Nabhikiya Vidyut Nigam Limited (BHAVINI) are two Public Sector Undertakings authorized for this purpose. Private Sector can participate in setting up of nuclear power plants as a junior equity partner.
>
> Some private sector companies and industry organizations have, at various forums, requested amendment of the Act to allow private sector participation in nuclear power generation.
>
> Private sector in India is in a position to participate in setting up nuclear power plants through supply of components, equipment and works contracts."
>
> (emphasis supplied)

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The above answer on the floor of the Assembly by the Minister reflects the position of the Government. In this regard, it may be relevant to note that in the Official Website of Rajya Sabha, in the booklet, which is part of the Rajya Sabha Practice and Procedure Series, while dealing with the relevance of the "Question Hour" and the sanctity attached to the response given by the Ministry, it is stated as under:

> "DISCUSSION IN RAJYA SABHA:
>
> The 'Question Hour' is an important part of the parliamentary proceedings which gives the institution of Parliament the great significance it possesses. This Hour has assumed greater importance because the members can elicit information through questions on matters affecting the day-to-day life of the citizens for which Ministers are collectively and severally answerable to the legislature..... Thus, answers to questions achieve twin objectives -- one, the public at large comes to know of the policies of the Government and two, information about public reaction and public opinion about a Government policy and its implementation including its shortcomings is fed back to the Government to enable them to make necessary modifications, if required in the public interest.
>
> Ministers have to be precise and accurate while answering questions. The information given through the answers is always taken as authentic. So, Ministers have to be very careful while giving answers. They cannot afford to mislead the House by giving wrong and inaccurate answers which might lead to raising questions of privilege. If a Minister later finds that the information supplied is inaccurate or incorrect, he may make a statement in the House correcting the previous answer, in case it is a starred question or lay a statement on the Table of the House, in case of an unstarred question. Where a Minister feels that he cannot supply authentic information when the question is asked, he may ask for time and assure the House to supply it as soon as it is available."
>
> (emphasis supplied)

The answer by the concerned Ministry whereby it is stated that private participation is not prohibited appears to put the issue beyond the pale of any doubt that the activity/function of the petitioner would not qualify as "Sovereign function" as it fails the test of inalienability.

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iii) Finding of the Tribunal:

The finding of the Tribunal that the petitioner works in collaboration with nearby Universities and Colleges and serves as interface between Board of Research in Nuclear Science which is the funding arm of the department of Atomic energy which supports Universities is again indicative of the fact that these are functions were government itself is looking to collaborate with third parties and also looking forward to foreign participation and thus question of the said function being inalienable needs to be rejected. Collaboration is normally understood to mean "to work together with others". Collaboration is antithetical and incompatible to inalienability.

In view of the same, it appears that the attempt by the petitioner to suggest that the functions of the petitioner is sovereign needs to be rejected, for all the reasons set out above.

11. Now coming to the question as to whether a "Research Institute" would fall within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. This Court finds that the said question is no longer res-integra and the same is answered by the Seven-Judge Constitution Bench in the case of Bangalore Water Supply and Sewerage Board reported in (1978) 2 SCC 213, wherein while dealing with research institutes it was held as under:-

> "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 cash 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

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> 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."
>
> (emphasis supplied)

It is thus clear that the Research Institutes even if it is a separate entity disconnected from the principal industry which funded the institute itself, it can nevertheless be regarded as an industry. As long as an organisation propelled by systematic activities modelled on cooperation between the employer and employee calculated to through up discoveries and inventions even if it runs without profit motives, it would constitute an "Industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. On applying the same to the order of the Tribunal wherein it was found as a matter of fact that the petitioner's research is being utilised for commercial purposes and the researchers of the petitioner's unit work in collaboration with other Institution's students would show that the petitioner would fall within the meaning of an "Industry" under the Industrial Disputes Act, 1947.

iv) Relevance of the decision in Physical Research Laboratory:

Reliance was sort to be placed by the petitioner on the judgment of the Hon'ble Supreme Court in the case of Physical Research Laboratory to submit that research institutes would fall outside the ambit and scope of the definition of the Industry within the meaning of Section 2(j) of the Industrial Disputes Act. The relevant portion of the said judgment is extracted below:

Physical Research Laboratory v. K.G. Sharma, (1997) 4 SCC 257 : 1997 SCC (L&S) 1057

> "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

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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."

(emphasis supplied)

12. It appears that the reliance on the above judgment may be misplaced/misconceived inasmuch as it was held that the Physical Research Laboratory would not constitute an "Industry" on the basis of finding of the Tribunal that there is no material to show that the knowledge acquired by the PRL is marketable or has any commercial value nor was it pointed out that the knowledge acquired by the PRL on the results of research would be useful to anyone other than those engaged in

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the study.

13. To the contrary, it is an admitted fact that the research studies by the petitioners herein are being used by the Nuclear power stations to enhance the efficiency and quality of the electricity generated and the said electricity is in turn sold to consumers. The research work has commercial value. Thus on facts, the decision by Supreme Court in Physical Research Laboratory may have no bearing to the case of the petitioner in the present case. Taking into account all the above aspects, it leaves no room for any doubt that the petitioner would constitute an '' Industry '' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947.

14. In view of the same, these Writ Petitions stand dismissed and the order of the Tribunal in I.D.Nos.62/1992 and 63/1992 stands affirmed. The 1st respondent having attained superannuation, question of reinstatement may not arise, however, the 1st respondent shall be entitled to the benefit of continuity of service and consequential retirement/ terminal benefits in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ham/mka

To :

The Industrial Tribunal,
Tamil Nadu, Chennai-600 104.

+2cc to Mr.K.M.Ramesh, Advocate, S.R.No.35476

W.P. Nos.42419 and 42524 of 2006
and M.P. Nos.1 to 1 of 2006,
1, 2 of 2007 and 2 of 2006

SMI(CO)
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