



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1754/2011

Chief Engineer (Irrigation) and Ors. Vs. Rashtriya P.W.D. Employees Union

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. B. Bissa, A.G.P for petitioners.
None for the respondent, though served.

CORAM : **ANIL L. PANSARE, J.**

DATE : **03.08.2024**

Heard Mr. S. B. Bissa, learned A.G.P for petitioners.
None appears for the respondent, though served.

2. On 05.07.2024 following order was passed.

*“The learned Counsel for Respondents submits
that the Petition has become infructuous.*

*2. The learned A.G.P seeks time to take
instructions. Time granted.*

3. Stand over to 19th July, 2024.”

3. The petitioner – Irrigation Department has filed the present petition against award passed by the Industrial Tribunal, by which the complaint filed by three employees of the Irrigation Department under Section 28 read with Section 30 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 was entertained.

4. Contention of the Irrigation Department was that it is not an industry within the meaning of Section 2(b) of the Industrial Disputes Act, 1947. The Industrial Tribunal, however, held otherwise.

5. Learned A.G.P. for petitioners has invited my attention to judgment of the Hon'ble Apex Court in **State of Madhya Pradesh and Ors. Vs. Somdutt Sharma, (2021) 12 SCC 53,** wherein this issue has been answered in following terms.

“10. The respondent has only relied upon sub-clause (ii) of clause (k) of section 2. The Irrigation Department, as noted in paragraph 13 of the impugned judgment and order, looks after creation and maintenance of irrigation potential through construction of water resources projects. The Irrigation Department also deals with disaster management, calamity management, maintenance of flood control works, reservoir operations etc. None of these functions will attract the definition of “Industrial Establishment”. Even assuming that some of the employees may be doing the work of pumping of water, that is not sufficient to hold that Irrigation Department of the first appellant is carrying on manufacturing process. Overall activities and functions of the Irrigation Department will have to be considered while deciding the question whether it is carrying on manufacturing activities. Few employees of the Irrigation Department out of several may be incidentally operating pumps. But the test is what are the predominant functions and activities of the said Department. Even if the activity of operation of pumps is carried on by few employees, the Irrigation department does not carry on manufacturing process. As it is not carrying on manufacturing process, it is not a factory within the meaning of clause (m) of section 2 of the Factories Act. Therefore, the Irrigation Department of the first appellant will not be an Industrial Establishment within the meaning of Section 25-L. Accordingly, Chapter V-B will have no application in the present case.”

6. As could be seen, the Supreme Court has categorically held that the Irrigation Department will not be an industrial establishment within the meaning of Section 25-L of the Factories Act, 1948.

7. In that view of the matter, the order passed by the Industrial Tribunal is not sustainable.

8. Accordingly, the writ petition is allowed. Impugned order dated 13.03.2009 passed by Industrial Court, Nagpur in Complaint (ULPN) No.744/1991 is quashed and set aside.

No order as to costs.

(Anil L. Pansare, J.)