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# Case commentary of Secretary Madras Gymkhana Employees Union vs Management of Gymkhana Club and Bangalore water supply and Sewerage Board vs R. Rajappa

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## ABSTRACT

*Sustainable development has evolved as a significant element of modern state where the states accept and aim to implement the sustainable development goals but in the process of securing better future, very often, the present scenario demanding more effort, is either overlooked or compromised. Similarly the location of justice faces a tough challenge while dealing with sustainable development and climate change issues. This article analyses the conflict faced by justice in making a choice while dealing with sustainability issues thereby taking into account where and how it has to be applied in order to reduce the scope of favouring any bloc or regime.*

## I. FACTS OF THE CASE

The Gymkhana Club had 1200 members from which 800 were active members and to serve them there were 194 workmen. The main aim of the club was to provide a place for sports and games facilities for recreation and entertainment. The club has a golf course, tennis court, rugby and football fields, as well as dance, supper, and other special occasion events. The employees were not paid bonuses.

## II. ISSUES

1. Whether Gymkhana Club will be considered as an industry or not?

## III. LAWS APPLIED IN THE CASE

**Section 2** of the Industrial Dispute Act, 1947

“Industry” under Section 2(j) of the Act means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial

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occupation, or avocation of workmen.

“Employer under Section 2(g) of the Act means-

1. In relation to any industry carried on by or under the authority of any department of the Centre or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department.
2. In relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority.

“Workman” under Section 2(s) of the Act means any person (including an apprentice) employed in any industry to do any manual, skilled, unskilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute.

#### **IV. JUDGMENT**

##### **(A) Industrial Tribunal of Madras**

The Tribunal held on September 2, 1964, that the management of the Gymkhana Club in Madras is not obligated to pay bonuses to its employees for the year 1962 since the Club is not an "industry."

The case was reviewed in the *Bangalore Water Supply Case*, In this case, a Triple Test was established to determine what is an industry:-

- a. Presence of a Systematic Activity
- b. Organized Cooperation between employer and employee
- c. For the production of goods and services to satisfy human needs

In this case, it was held that the Gymkhana Club will be considered as an industry.

#### **V. ANALYSIS**

Initially, The Gymkhana Club was not considered an industry. After the Bangalore Supply case, this case was reviewed, and as the Gymkhana case fulfilled the triple test which was laid down by the Bangalore Supply Case later it was held that the Gymkhana Club will be considered industry as the workmen are working for wages and produce the goods and services not the members of the club. The definition of the industry changed because of the Bangalore Water Supply Case. Whether it is a trade or business but if the relation of the employer and employee is present and together, they're carrying out profit then it will be called an industry.

***Bangalore water supply v/s A. Rajappa & Others*****Appellant:** Bangalore water supply**Respondent:** A. Rajappa & Others**Ref:** AIR 1978 SC 553**Date of Judgment:** 21/02/1978**VI. FACTS OF THE CASE**

Respondent employees were fined by the Appellant Board for misconduct and various payments were made to them. Accordingly, they filed suit No. 5/72 under Section 33C (2) of the Industrial Disputes Act, alleging that the penalty imposed was violated in the principles of natural justice.

The Appellant Board had challenged before the Labour Court that the Board, a statutory body performing basic services by providing basic services to citizens, is not an industry with a definition under section 2 (j) of the Industrial Disputes Act, and as a result, workers were non-workers and the Labour Court had no jurisdiction to decide this matter.

This objection was overruled and the Appeal Board filed two Writ 'Petitions before the Karnataka High Court in Bangalore. The Division Bench of that Supreme Court dismissed the appeals and held that the Appeal Board was "industry" within the definition of the term under section 2 (i) of the Industrial, Disputes Act, 1947.

The appeals by Special Leave, considering the chances of confusion from the crop 'of cases in an area where the common man has to understand and apply the law and the desirability that there should be, comprehensive, clear, and conclusive declaration as to what is an industry under the Industrial Disputes Act as it stands were placed for consideration by a larger Bench.

**VII. ISSUES**

1. The issue in the case was that whether Bangalore Water Supply and Sewerage Board will fall under the definition of 'Industry' and in fact, particularly the issue was what is an 'Industry' under Section 2(j) of the Industrial Dispute Act?
2. Do clubs and other organizations whose general emphasis is not on profit-making but fellowship and self-service fit into the definitional circle?
3. Whether Charitable Institutions Are Industries?
4. Whether Sovereign or Regal functions will be industry?

5. Whether Municipal Corporations Industry?
6. What is the meaning of the term 'industry'?

### **VIII. LAWS APPLIED IN THE CASE**

#### **(A) Section 2 Of The Industrial Dispute Act**

(j)<sup>[1]</sup> " industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply, or distribution of goods or services intending to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious), whether or not,--

(i) any capital has been invested to carry on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit and includes--

(a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948 );

(b) any activity relating to the promotion of sales or business or both carried on by an establishment. but does not include--

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one. Explanation.-- For the purposes of this sub-clause," agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951 ); or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relating to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defense research, atomic energy, and space; or

(7) any domestic service; or

(8) any activity, being a profession practiced by an individual or body or individuals if the number of persons employed by the individual or body of individuals with such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like a body of individuals, if the number of persons employed by the co-operative society, club or other like a body of individuals concerning such activity is less than ten

**(B) Section 33C in The Industrial Disputes Act, 1947**

[2]Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; within a period not exceeding three months; Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.

**IX. JUDGEMENT**

It held that the Bangalore Water Supply and Sewerage Board will fall under the definition of the industry and by justifying this it gave an elaborating definition of industry.

‘Industry’, as defined in Section 2(j) and explained in *D. N. Banarjee Vs. P. R. Mukherjee* 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 sectors.

(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.

Although Section 2(j) uses words of the widest amplitude in its two limbs their meaning cannot

be magnified to overreach itself.

(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in Banerjee and this judgment, so also, service, calling, and the like. This yields the inference that all organized activity possessing the triple elements, 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 adventure 'analogous' to the carrying on of 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 the analogy.

Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults, or inner sense of incongruity or other sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation, and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition.

## **X. SIGNIFICANCE OF THE CASE**

After the Bangalore Water supply case the Supreme Court came up with a working principle called a triple test:

- There should be systematic Activity
- Organized by Co-operation between employer and employee,

For the production and/or distribution of goods and services calculated to satisfy human wants and wishes.

The following points were also emphasized in this case:

1. The industry does not include spiritual or religious services or services geared to celestial bliss
2. The absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private, or other sectors.
3. The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relationship
4. If the organization is a trade or business, it does not cease to be one because of philanthropy animating the undertaking

5. Therefore, the consequences of the decision, in this case, are that professions, clubs, educational institutions co-operatives, research institutes, charitable projects, and other kindred adventures, if they fulfill the triple test stated above cannot be exempted from the scope of section 2(j) of the Act.

The Dominant Nature Test also arose from this case which means if there are complex activities in an enterprise, but the dominant activity comes under the triple test, then the whole undertaking is held as an industry.

The aforementioned two tests resulted in making professions, clubs, educational institutions, cooperatives, research institutes, charitable projects, and other similar ventures come under the definition of the industry if they fulfill the tests.

The word "industry" appears to have been redefined under the Amendment Act in the context of the definition of the word "industry" in the case of Bangalore Water. Had it not been for the broader definition of such "industrial" nature given in the case of Bangalore Water it would have been open to Parliament to introduce a broader or more restrictive definition to the industry by blocking or excluding it from State industrial activities. In the current context, industries' have become one of the most important components of a well-functioning society, where no harmonious relationship between workers and workers leads to inefficiency. When the law itself is not clear about the word 'industry' it will inevitably affect the industry to a large extent. The current law is the translation of the first Section 2 (j)

Significant changes in the law and/or enactment of the new law were not possible due to the definition given in the "industrial" definition in the Bangalore Water case. Therefore, the above-mentioned case law has helped to gain a gradual emergence in the definition of industry. It is important to note that the exploitation of workers and employers must be equally assessed. The law especially the industrial law needs to be interpreted to ensure that employers or employees are not in a position to manage another. Both should be able to work together for the benefit of the hands in the growth of the sector and thus serve the community efficiently and effectively.

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