‘APPROPRIATE GOVERNMENT’

‘INDUSTRY’

‘INDUSTRIAL DISPUTE’

‘WORKMEN’

Definition in the Industrial Dispute Act, 1947 and relevant Case-Studies

APPROPRIATE GOVERNMENT

- Section 2(A) defines ‘Appropriate Government’

- Central Government
- Or
- State Government

- Location of the dispute, e.g. Union Territories- Central Government, States- State Government

INDUSTRY

- 2(j) ‘industry’ means any systematic activity carried on by cooperation 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 with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature) whether or not –
- (i) any capital has been invested for the purpose of carrying 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 5-A of the Dock Workers (Regulation of Employment) Act, 1948;

INDUSTRY

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

(1) any agriculture 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; or

(2) hospitals or dispensaries; or

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

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

(5) khadi or village industries; or

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

(7) any domestic service; or

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

INDUSTRIAL ESTABLISHMENT OR UNDERTAKING

- Section 2(ka) ‘industrial establishment or undertaking’ means an establishment or undertaking in which any industry is carried on: Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then:
- (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment of undertaking;
- (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

INDUSTRIAL DISPUTE

- Section 2(k) ‘Industrial Dispute’ means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, or any persons.

WORKMEN

- Section 2(s) ‘Workmen’ means any person (including, an apprentice) employed in any industry to do any natural, unskilled, skilled, 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, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-
- (i) who is subject to the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding 10,000 Rs per mensem or exercises, either by nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

INDUSTRY – JUSTICE KRISHNA IYER'S DOMINENT NATURE TEST

The dominant nature test :

a) Systematic/Organized Activity
b) Cooperation between employer and employee
c) Production and/or distribution of goods and services to satisfy human wants

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

DHARANGADHARA CHEMICAL WORKS LTD. V. STATE OF SAURASHTRA 1957 AIR 264

- Question: Whether agrarias working in the Salt Works at Kuda in the Rann of Cutch are workmen within the meaning of the term as defined in the Industrial Disputes Act, 1947.
- The agarias work themselves with their families on the pattas allotted to them. They are free to engage extra labour but it is they who made the payments to these labourers and the appellants have nothing to do with the same. The appellants do not prescribe any hours of work for these agrarias. No muster roll is maintained by them nor do they control how many hours in a day and for how many days in a month the agarias should work. There are no rules as regards leave or holidays. They are free to go out of the works as they like provided they make satisfactory arrangements for the manufacture of salt. In about 1950, disputes arose between the agarias and the appellants as to the conditions under which the agarias should be engaged by the appellants in the manufacture of salt. The appellants contested the proceedings on the ground, inter alia, that the status of the agarias was that of independent contractors and not of workmen and that the State was not competent to refer their disputes for adjudication under s. 10 of the Act.
- *It is almost impossible to give a precise definition of the distinction. It is often easy to recognize a contract a service when you see it, but difficult to say wherein the difference lies. A ship's master, a chauffeur, and a reporter on the staff of a newspaper are all employed under a contract of service; but a ship's pilot, a taxi man, and a newspaper contributor are employed under a contract for services. oNE FEATURE WHICH SEEMS TO RUN THROUGH TH E INSTANCES IS THAT, A UNDER A CONTRACT OF SERVICE, A MAN IS EMPLOYED AS PART OF THE BUSINESS, AND HIS WORK IS DONE AS AN INTEGRAL PART OF THE BUSINESS; and his work is done as an integral part of the business; whereas, under a contract for services, his work, although done for the business, is notintegrated into it but is only accessory to it.*

- The proper test is whether or not the hirer had authority to control the manner of execution of the act in question The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. As has been noted above, recent pronouncements of the Court of Appeal in England have even expressed the view that it is not necessary for holding that a person is an employee, that the employer should be proved to have exercised control over his work, that the test of control was not one of universal application and that there were many contracts in which the master could not control the manner in which the work was done (Vide observations of Somervell, L.J., in Cassidy v. Ministry of Health (supra), and Denning, L.J., in Stevenson, Jordan and Harrison Ltd. v. MacDonald and Evans (supra).) The correct method of approach, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer or to use the words of Fletcher Moulton, L.J., at page 549 in Simmons v. Health Laundry Company
- What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has, then he is a workman and the fact that he takes assistance from other persons would not affect his status. The position is thus summarised in Halsbury's 'Laws of England', Vol. 14, pages 651-652:- " The workman must have consented to give his personal services and not merely to get the work done, but if he is bound under his contract to work personally, he is not excluded from the definition, simply because he has assistance from others, who work under him." (See also Grainger v. Aynsley : Bromley v. Tams (1); Weaver v. Floyd (2) and Whitely v. Armitage (a).) In the instant case the agarias are professional labourers. They themselves personally work along with the members of their families in the production of salt and would, therefore, be workmen. The fact that they are free to engage others to assist them and pay for them would not,in view of the above authorities, affect their status as workmen.
- The principles according to which the relationship as between employer and employee or master and servant has got to be determined are well settled. The test which is uniformly applied in order to determine the relationship is the existence of a right of control in respect of the manner in which the work is to be done. A distinction is also drawn between a contract for services and a contract of service and that distinction is put in this way. In the one case the master can order or require what is to be done while in the other case he can not only order or require what is to be done but how itself it, shall be done. The test is, however, not accepted as universally correct. The following observations in Stevenson, Jordan and Harrison Ltd. V. Macdonald and Evans are apposite in this context:

- There are no doubt considerable difficulties that may arise if the agarias were held to be workmen within the meaning of s. 2 (s) of the Act. Rules regarding hours of work etc., applicable to other workmen may not be conveniently applied to them and the nature as well as the manner and method of their work would be such as cannot be regulated by any directions given by the Industrial Tribunal. These difficulties, however, are no deterrent against holding the agarias to be workmen within the meaning of the definition if they fulfil its requirements. The Industrial Tribunal would have to very well consider what relief, if any, may possibly be granted to them having regard to all the circumstances of the case and may not be able to regulate the work to be done by the aqarias and the remuneration to be paid to them by the employer in the manner it is used to do in the case of other industries here the conditions of employment and the work to be done by the employees is of a different character. These considerations would necessarily have to be borne in mind while the Industrial Tribunal is adjudicating upon the disputes which have been referred to it for adjudication. They do not, however, militate against the conclusion which we have come to above that the decision of the Industrial Tribunal to the effect that the agarias are workmen within the definition of the term contained in s. 2 (s) of the Act was justified on the materials on the record. We accordingly see no ground for interfering with that decision and dismiss this appeal with costs. Appeal dismissed.
- Due control and supervision to establish a relation between employer and employee and whether the worker has agreed to work ’personally’, it does not matter if then the workmen takes assistance of another party for the execution of the work.
- The essential condition of a person being a workman within the terms of this definition is that he should be employed to do the work in that industry, that there should be, in other words, an employment of his by the employer and that there should be the relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a workmean within the definition of the term as contained in the Act.

D.C. DEWAN MOHIDEEN SAHIB AND SONS V. THE INDUSTRIAL TRIBUNAL, 1966 AIR 370

- Contractors took leaves and tobacco from the appellant (the employer) and employed workmen for manufacturing bidis. After bidis were manufactured, the contractors took them back from the workmen and delivered them to the appellants. The workmen took the leaves home and cut them there; however, the process of actual rolling by filling the leaves with tobacco took place in contractor's factories.
- The contractors (alleged workmen) kept no attendance register for the workmen, there was no condition for their coming and going at fixed, there was no condition for their coming and going at fixed: hours, nor were they bound to come for work every day; sometimes they informed the contractors if they wanted to be absent and sometimes they did not. The contractors themselves provided that they had no resort to any action in case the workmen absented themselves without leave. The payment was made to the workmen at piece rates after the bidis were delivered to the appellants.
- The employee paid a sum for the manufactured bidis, after deducting therefrom the cost of tobacco and the leaves already fixed, to the contractors who in their turn paid to the workmen, who rolled bidis, their wages. Whatever remained after paying the workmen would be contractors' commission for the work done, The Tribunal held that there was no sale either of the raw materials or of the finished products for according to the agreement, if the bidis were not rolled, raw materials had to be returned to the employer and the contractors were forbidden from selling the raw materials to anyone else. Further the manufactured bidis could only be delivered to the appellants who supplied the raw materials. Further price of raw materials and finished products fixed by the appellants always remained the same and never fluctuated according to market rate.