IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3349 OF 2001

1. The Executive Engineer
Nashik Irrigation Division
Nashik

2. The Deputy Engineer
Irrigation Sub-Division
Malegaon, Dist.:Nasik ... Petitioners

V/s.

Shri Radhakisan Deoram Khairnar
R/o.Sangameshwar, Jagtap Galli
Malegaon, Tal.:Malegaon,
Dist.: Nasik ... Respondent

a/w

WRIT PETITION NO.3369 OF 2001

1. The Executive Engineer
Nashik Irrigation Division
Nashik

2. The Deputy Engineer
Irrigation Sub-Division
Malegaon, Dist.:Nasik ... Petitioners

V/s.

Shri Chhagan Sudam Borase
R/o.Vajirkhede
Tal.:Malegaon,
Dist.: Nasik ... Respondent

Mr.V. Sonpal, AGP, for the Petitioners
Mr.C.T. Chandratre for Respondent in W.P. No.3349/2001

a/w

WRIT PETITION NO.3354 OF 2001

The Executive Engineer
Employment Guarantee Scheme
Public Works Department
Near Sat Rasta Petrol Pump
Solapur ... Petitioner

V/s.

Shri Pandit Marutirao Salunkhe
r/o. Kodar, Post.:Jinti
Tal.: Karmala Dist.: Solapur ... Respondent

Mr.V.A. Sonpal, AGP, for Petitioner
None for Respondent

a/w

WRIT PETITION NO.3367 OF 2001

The Executive Engineer
Employment Guarantee Scheme
Public Works Department
Near Sat Rasta Petrol Pump
Solapur ... Petitioner

V/s.

Shri Balwant Mahadev Rupnawar
r/o. At & Post Lonand
Tal.: Malshiras, Dist.: Solapur ... Respondent

Mr.V.A. Sonpal, AGP, for Petitioner
Mr.G.S. Godbole with Mr.N.Muley for Respondent

a/w

WRIT PETITION NO.3371 OF 2001

The Executive Engineer
Employment Guarantee Scheme
Public Works Department
Near Sat Rasta Petrol Pump
Solapur ... Petitioner

V/s.

Shri Baliram Bhoja Kengar
r/o. Karfar, Tal. Sangola
Dist.: Solapur ... Respondent

Mr.V.A. Sonpal, AGP, for Petitioner
Mr.G.S. Godbole with Mr.N.Muley for Respondent

a/w
WRIT PETITION NO.5332 OF 2001

The Deputy Engineer
Zilla Parishad
Construction Sub-Division
Barshi, Dist.: Solapur ... Petitioner

V/s.

Shri Vishwanath Hari Jadhavar
r/o. Walvad, Post - Chare
Tal.: Barshi Dist.: Solapur ... Respondent

Mr.Nitin Jamdar for Petitioner
Mr.G.S. Godbole with Mr.N.Muley for Respondent

AND
WRIT PETITION NO.5341 OF 2001

The Deputy Engineer
Zilla Parishad
Construction Sub-Division
Barshi, Dist.: Solapur ... Petitioner

V/s.

Shri Jagdishkumar Vitthal Bhalerao
r/o. Walvad, Post - Chare
Tal.: Barshi Dist.: Solapur ... Respondent

Mr.Nitin Jamdar for Petitioner
Mr.S.Dhepale i/b R.V. More for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

RESERVED ON: **JULY 19, 2005**
PRONOUNCED ON: **SEPTEMBER 12, 2005**

P.C.:

. Writ Petition Nos.3349 of 2001 and 3369 of 2001

impugn the orders of the Labour Court and the order of the Industrial Court in revision. The complaints were filed under Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 by the concerned workmen who are respondents in all these petitions challenging their termination from service The complaints were allowed by the Labour Court and the Petitioners were directed to reinstate the workmen in service with continuity of service and full backwages from the date of termination within one month from the date of the order. The Industrial Court in revision has confirmed the judgment of the Labour Court, however, without backwages. The Industrial Court has proceeded to direct the Petitioners to consider the names of the workmen for absorption of their services in the scheme approved by the Apex Court within two months from date of the order.

2. In Writ Petition Nos.5341 of 2001, 5332 of 2001, 3371 of 2001, 3367 of 2001 and 3354 of 2001, the workmen have obtained references for adjudication of their disputes regarding the illegal termination of their services. The Labour Court in all these references has set aside the order of termination of service and has granted reinstatement with continuity of service. Some of the Respondents have been awarded backwages while

others have been denied the same.

3. All these petitions are being heard together since the questions involved are the same, i.e., (i) whether the employees working as muster assistants are working in an industry as defined under section 2(j) of the Industrial Disputes Act? (ii) Whether these persons who were employed to oversee the work of unskilled workmen, employed through the Employment Guarantee Scheme (for short, hereinafter referred to as 'EGS') on various works like irrigation, road construction, building of canals, etc. are workmen within the meaning of section 2(s) of the ID Act.

4. It is the contention of the Petitioners in all these cases that the employees were employed on the EGS which is a scheme conducted as a sovereign function of the State of Maharashtra. The Petitioners, therefore, contend that it could not be said that the muster assistants were employed in an industry as defined under section 2(j) of the Industrial Disputes Act. Consequently, they were not workmen as defined under section 2(s) of the ID Act, nor were they entitled to raise an industrial dispute or to file a complaint under the MRTU & PULP Act.

5. It is submitted on behalf of the Petitioners in these petitions by the learned Assistant Government Pleader that in view of the judgment of a learned Single Judge of this Court in Writ Petition No.703 of 1997 dated on 15.10.1999, the issue is no longer *res integra*. It has been concluded in that judgment that the muster assistants are not workmen within the definition of section 2(s) of the Industrial Disputes Act (for short, 'hereinafter referred to as 'I.D. Act') nor are they employed in any industry as defined in section 2(j) of the ID Act. According to the learned AGP, projects like road building, irrigation, etc. are sovereign functions of the State and, therefore, it cannot be said that the muster assistants were working in an industry. Furthermore, according to the learned AGP, the EGS is a scheme for creating work for the unemployed, unskilled workers. It is a sovereign function of the State to provide jobs to all in accordance with the Directive Principles of State Policy as envisaged by the provisions of Article 39 of the Constitution of India. A person employed through that scheme or for the effective working of the scheme is not a workman submits the learned AGP, in view of the judgment of a learned single Judge of this Court (Patil, J.) in **Writ** Petition **No.703 of 1997**. He has relied on the judgments of the Apex Court in *Delhi Development Horticulture Employees*

Union v/s. Delhi Administration, **AIR 1992 SC 789** and in **Civil Appeal No.15339 of 1996** *(State of Maharashtra v/s. Subhash Narayan Ahirrao)* where the Apex Court has set aside the judgment of a learned Single Judge of this Court in *Subhash Narayan Ahirrao v/s. Dy. Engineer, PWD Sub-Division, Dhule & Anr.,* reported in **1991 LAB. I.C. 1688**. The learned AGP has also relied on the judgment of the Supreme Court in the case of *Executive Engineer, State of Karnataka v/s. K. Somasetty*, **AIR 1997 SCW 2627** and *Des Raj v/s. State of Punjab*, **AIR 1988 SC 1182** and *State of Gujarat v/s. Pratamsingh Narsinh Parmar,* **(2001) 9 SCC 713** and the judgment of another learned Single Judge of this Court which follows the judgment of Patil, J. in *Chief Executive Officer, Zilla Parishad, Ahmednagar v/s. Daulat Narsinghrao Deshmukh & Anr.*, **2001 (2) MH.L.J**. 543.

6. The submissions of the learned AGP have been adopted by Mr.Jamdar, learned Counsel appearing in Writ Petition Nos.5332 of 2001 and 5341 of 2001 for Petitioners. He adds further that the judgment of the Bench of 5 Judges of the Supreme Court in the case of *State of Uttar Pradesh v/s. Jai Bir Singh,* **(2005) 5 SCC 1**, referring the issue as to what is an industry to a larger bench for reconsideration of the judgment in the case of *Bangalore Water Supply & Sewerage Board v/s. A.*

Rajappa, **(1978) 2 SCC 213,** supports the reasoning adopted by Patil, J. in W.P. No.703 of 1997.

7. On the other hand, Mr.Godbole, learned Counsel appearing for the Respondents, submits that the judgment of Patil, J. in **W.P. No.703 of 1997** is per incuriam in view of the fact that the learned Single Judge has not considered several judgments of the Supreme Court including *Chief Conservator of Forests & Anr. V/s. Jagannath Kondhare & Ors.,* **(1996) 2 SCC 293** and *Management of Dandakaranya Project Koreput v/s. Workmen*, **AIR 1997 SC 852**, *All India Radio v/s. Santosh Kumar,* **AIR 1998 SC 941** and *Agricultural Produce Market Committe, v/s. Ashok Harkuni,* **AIR 2000 SC 3116** besides the judgment of a learned Single Judge of this Court (Srikrishna, J., as he then was) in the case of *M.D. Khairnar v/s. v/s. State of Maharashtra & Ors*., **1995 II CLR 649** besides relying on the judgment in Bangalore Water Supply (supra).

8. Mr.Chandratre, while adopting the submissions canvassed by Mr.Godbole, points out the decision of the learned Single Judge at the Nagpur bench of this Court in Writ Petition No.2631 of 1999 delivered on 10.2.2001. The learned Judge has dismissed the writ petition filed against the muster assistants by relying on *Jagannath*

Kondhare's case (supra).

9. A perusal of the judgment of Patil, J. in **W.P. No.703 of 1997** indicates that the learned Judge has referred to the judgment of this Court in the case of *Subhash Narain Ahir Rao* (supra) and *M.D. Khairnar* (supra). He has distinguished these judgments observing thus:

> 9. .... However, it is material to note that in the said case, there was no material to note that in the said case, there was no dispute of the fact that the petitioner was not doing any manual work and that, he was neither paid daily wages or weekly wages as was the case with the workers under E.G.S. but, was paid monthly salary and was performing supervisory functions. These factors, according to the learned Judge, cumulatively lead to the irresistible conclusion that the petitioner was not part of the E.G.S. as sought to be contended. Similarly, it is material to note that in M.D. Khairnar's case, the petitioners were not employed under the scheme framed under M.E.G. Act. They were already employed as Muster Assistants to do the clerical work in the Forest Department. This is however, not so with regard to the cases before me. All the concerned respondents, came to be employed under the E.G.S. prepared under the M.E.G. Act. Therefore, they were very much part of the E.G.S. If this distinguishing factor is taken into consideration, then it would be clear that both these decisions would not be applicable to the present case.

The learned Judge has relied on the judgment in *Delhi Development Horticulture Employees Union* (supra) and *H.K. Makwana v/s. State of Gujarat & Ors.*, **1994 II CLR**

766. He has further observed that the EGS framed under the Maharashtra Employees Guarantee Act, 1977 has as its very object and purpose of providing work to the unskilled and manual workers in the rural area at all times. The learned Judge has then observed in paragraphs 13 and 16 thus:

> 13. Under the Constitution of India, right to work is not a fundamental right but under Part IV the same is included in one of the directive principles of State Policy. Article 41 states inter alia, that the State shall, within the limits of economic capacity and development, make effective provisions for securing the right to work in cases of unemployment. This right has received statutory recognition with certain limitations and conditions under the M.E.G. Act when Section 3 declares that every adult person in the State shall have right to work, that is, right to get employment for doing unskilled manual work and to receive wages therefor. The provision of employment guaranteed to unskilled manual workers in the rural area is made by the State in exercise of its sovereign power or function and it cannot be said that the State has embarked upon a commercial or industrial activity. Having regard to the 'dominant nature test' as laid down in clause IV(b) in Bangalore Water Supply case (supra), the E.g.S. cannot be regarded as industry within the meaning of Section 2(j) of the I.D. Act.
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> 16. Considering the above mentioned position, I am inclined to take a view that the Muster Assistants who are employed under the E.G.S. framed under the M.E.G. Act cannot be regarded as "workmen" within the scope of the definition of the said term as given in section 2(s) of the I.D. Act as the work which is provided to them does not fulfill the requirements of the term "industry" as defined by section 2(j) of the I.D. Act. Consequently, there cannot be a relationship of employer and employees between

> the Chief Executive Officer of the Zilla Parishad and the Muster Assistants. Therefore, a dispute between them in connection with the employment would not be an "industrial dispute" within the meaning of section 2(k) of the I.D. Act. It must, therefore, be held that the Deputy Commissioner of Labour to the Labour Court under the I.d. Act were not competent, will have to be upheld. Eventually, the awards passed by the Labour Courts quashing the orders of termination of the concerned Muster Assistants as well as the labourer in Writ Petition No.703/97 and directing their reinstatement with back wages, cannot be sustained.

10. However, unfortunately, the judgment of the *Chief Conservator of Forests v/s Jagannath Kondhare & Ors. (supra), Management of Dandakaranya Project Koreput v/s. Workmen* (supra) and *Agricultural Produce Market Committee* (supra) have not been brought to the notice of the learned Judge. In *Kondhare's* case, the Apex Court was dealing with the question whether the forest department of the State Government is an industry within the meaning of section 2(j) of the I.D. Act Relying on the judgment in *Bangalore Water Supply* (supra) and *N.Nagendra Rao & Co. v/s. State of Andhra Pradesh*, the Apex Court has observed thus:

> 12. We may not go by the labels. Let us reach the hub. And the same is that the dichotomy of sovereign and non-sovereign functions does not really exist - it would all depend on the nature of the power and manner of its exercise, as observed in para 23 of Nagendra Rao case. As

per the decision in this case, one of the tests to determine whether the executive function is sovereign in nature is to find out whether the State is answerable for such action in courts of law. It was stated by Sahai, J. that acts like defence of country, raising armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory, are functions which are indicative of external sovereignity and are political in nature. They are, therefore, not amenable to the jurisdiction of ordinary civil court inasmuch as the State is immune from being sued in such matters. but then, according to this decision, the immunity ends there. It was then observed that in a welfare State, functions of the State are not only the defence of the country or administration of justice or maintaining law and order but extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. Because of this the demarcating line between sovereign and non-sovereign powers has largely disappeared.

13. The aforesaid shows that if we were to extend the concept of sovereign function to include all welfare activities as contended on behalf of the appellants, the ratio in Bangalore Water Supply case would get eroded, and substantially. We would demur to do so on the face of what was stated in the aforesaid case according to which except the strictly understood sovereign function, welfare activities of the State would come within the wider circle of sovereign function, thereby may be an inner circle encompassing some units which could be considered as industry if substantially severable.

14. This is not all, as Shri Dholakia has submitted that the Panchgaon Parwati Scheme (and for that matter the social forestry work undertaken in Ahmednagar District, in appeals relating to which Shri Bhandare has addressed us) being meant for preservation of forests and environment has to be regarded in any case, as part of inalienable function inasmuch as the type of work which was undertaken under that scheme could not have been done by a private individual or entity.

15. A perusal of the affidavit filed by the Chief Conservator of Forests on 5-12-1992, pursuant to our order of 6-11-1992, shows that the Pachgaon Parwati Scheme was framed as per the Government Resolution based on the policy decision taken in April 1976. The Scheme was to be initially for a period of 5 years and an area of about 245 hectares situated on a hill plateau on the southern outskirts and within easy access of Pune City was selected for creation of a park under bioaesthetic development for the benefit of the urban population. It is further stated that the scheme was "primarily intended to fulfil bioaesthetic, recreational and educational aspirations of the people which will have inestimable indirect benefit of producing enlightened generation of conservationists of nature inclusive of forests and wild life for the future". (p.137) The affidavit goes on to state (at p.138) that the Pune Forest Division is also doing afforestation for soil/moisture conservation under various State-level schemes as well as Employment Guarantee Schemes all of which are for a period of 5 years.

16. The aforesaid being crux of the scheme to implement which some of the respondents were employed, we are of the view that the same cannot be regarded as a part of inalienable or inescapable function of the State for the reason that the scheme was intended even to fulfil the recreational and educational aspirations of the people. We are in no doubt that such a work could well be undertaken by an agency which is not required to be even an instrumentality of the State.

17. This being the position, we hold that the aforesaid scheme undertaken by the Forest Department cannot be regarded as a part of the sovereign function of the State, and so, it was open to the respondents to invoke the provisions of the State Act. We would say the same qua the social foresting work undertaken in Ahmednagar District. There was, therefore, no threshold bar in knocking the door of the Industrial Courts by the respondents making a grievance about adoption of unfair labour practice by the appellants.

11. In the case of *Management of Dandakaranya Project, Koreput* (supra), (which judgment was also not noticed by Patil, J.) the Apex Court considered whether the Dandakaranya project undertaken by the Government of India to rehabilitate refugees from Pakistan was an industry. The facts involved in that case were similar to the facts in the present case. The Management took a stand before the Tribunal that the Reference was not competent because the Dandakaranya project was not an industry. The Apex Court observed that the dominant nature of the activities of the project and the nature of the duties discharged by the workmen in the Dandakaranya project established that it was an industry within the meaning of section 2(j) of the I.D. Act. The Apex Court, however, set aside the award in so far as it directed regularisation and instead directed payment of closure compensation under section 25FFF of the Industrial Disputes Act. The Apex Court in the case of All India Radio (supra) has held that both the All India Radio and Doordarshan are industries as defined under section 2(j) of the I.D. Act because although they were State owned broadcasting and telecasting establishments, they carried on activities which were not purely sovereign functions.

12. In the case of *Agricultural Produce Market Committee* (supra), the Apex Court while considering what is a sovereign function, has after relying on the judgments in Bangalore Water Supply (supra) and in *Chief Conservator of Forests v/s Jagannath Kondhare & Ors. (supra),* observed thus:

> 22. In other words, it all depends on the nature of power and the manner of its exercise, What is approved to be "Sovereign" is defence of the country, raising armed forces, making peace or war, foreign affairs, power to acquire and retain territory. These are not amenable to the jurisdiction of ordinary civil Courts. The other functions of the State including welfare activity of State could not be construed as "sovereign" exercise of power. Hence, every governmental function need not be "sovereign". State activities are multifarious. From the primal sovereign power, which exclusively inalienably could be exercised by the Sovereign alone, which is not subject to challenge in any civil Court to all the welfare activities, which would be undertaken by any private person. So merely one is employee of statutory bodies would not take it outside the Central Act. If that be then Section 2(a) of the Central Act read with Schedule I gives large number of statutory bodies should have been excluded, which is not. Even if a statute confers on any statutory body, any function which could be construed to be "sovereign" in nature would not mean every other functions under the same statute to be also sovereign. The Court should examine the statute to severe one from the other by comprehensively examining various provisions of that statute. In interpreting any statute to find it is "industry" or not we have to find its pith and substance. The Central Act is enacted to maintain harmony between employer and employee which brings peace and amity in its functioning. This peace and amity should be the objective in the functioning of all enterprises. Thisis to

> the benefit of both, employer and employee. Misuse of rights and obligations by either or stretching it beyond permissible limits have to be dealt with within the framework of the law but endeavor should not be in all circumstances to exclude any enterprise from its ambit. That is why Courts have been defining "industry" in the widest permissible limits and "sovereign" functioning within its limited orbit.

The Apex Court then considered the statement of objects and reasons of the Agricultural Produce Market Committee Act and the scheme of the Act and has held thus:

> 27. ... After scanning the whole Act and perusing the preamble and Statement of Objects and Reasons of the Act, it reveals that this Act deals with various facets of regulating activities within the market area with respect to the trading in agricultural produce. It includes establishment of various committees including charging of fees for service rendered to the traders of agricultural producers. Any enactment, scheme or project which sponsors helps in the trading activity is one of the State's essential functions towards welfare activities for the benefit of its subject. Such activities can be undertaken even by any non-governmental organisation or a private person, corporate or company. In fact, prior to the abolition of Zamindari, the Hats and Bazars (Markets) held on Zamindar's (Landowner) land, the Zamindar used to charge fees for holding such market, by providing land and facilities to the participants of such market By this it helped producers, sellers and public at large through such trading. This is similar, in a nature and form to what is being done now under the State Act through statutory functionaries. Thus none of these functions could be construed to be sovereign in nature or inalienable in character.
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> 28. It is true various functionaries under this Act are creature of statute. But creation as such, by itself, cannot confer it the status of performing inalienable functions of the State. The main controlling functions and power is

conferred on the market committee whose constitution itself reveals, except on e or two rests are all are elected members representing some on other class from the public. In fact, all governmental functions cannot be construed either primary or inalienable sovereign function. Hence, even if some forte functionaries under the State Act could be said to be performing sovereign functions of the State Government that by itself would not make the dominant object to be sovereign in nature of take the aforesaid Act out of the purview of the Central Act.

29. Thus merely an enterprise being statutory corporation, creature under a statute, would not take it outside the ambit of "industry" as defined under the Central Act. We do no find the present case falling under any exception laid down in the Bangalore Sewerage Board case (AIR 1978 SC 548: 1978 Lab IC 467) (supra). The mere fact that some employees of the appellant are Government servants would make no difference as the true test to find has to be gathered from the dominant object for which functionaries are working. It cannot be doubted that the appellant is an undertaking performance its duties in a systematic and organised manner, regulating the marketing and trading of agricultural produce, rendering services to the community. In the present case, as we have recorded earlier, we are concerned only with those employees who are not Government servants. Testing the dominant object as laid down in Bangalore Sewerage Board case (supra), we reach to inescapable conclusion that none of the activities of the Agriculture Produce Market Committee could be construed to be sovereign in nature. Hence, we have no hesitation to hold that this corporation falls within the definition of "industry" under Section 2(j) of the Central Act.

33. So, sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only State could exercise. Thus, various functions of the State, may be ramifications of ’sovereignty’ but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent

> domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintainance of law and order, internal and external security, grant of pardon. So, the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. In a given case even in subject on which the State has the monopoly may also be non-sovereign in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature. Absence of profit making or mere quid pro would also not make such enterprise to be outside the ambit of "industry" as also in State of Bombay case (AIR 1960 SC 610) (supra).

13. All these judgments cited on behalf of the Respondents have not been noticed by Patil, J. in his judgment in **Writ Petition No.703 of 1997.**

14. A learned Single Judge of this Court (Rebello, J.) in *Executive Engineer, Yavatmal Medium Project Division & Anr. v/s. Anant s/o. Yadao Murate & Anr.,* **1998 II LLJ 91** considered whether the projects of the irrigation department fell within the definition of industry. Several judgments were cited before the learned Single Judge including *Bangalore Water Supply* (supra), *Des Raj* (supra) and *K.Somasetty* (supra). The learned Judge has found that there is a conflict between the judgments in the case of *Des Raj* (supra) and *K.Somasetty* (supra) and has concluded in para 13 of the

judgment that the projects of irrigation department or work connected with that of the State of Maharashtra would fall within the definition of "industry" for the purposes of section 2(j) of the ID Act.

15. The judgment in *Ahir Rao* (supra) has been set aside by the Supreme Court because of the Government's decision to implement the scheme for absorption of muster assistants. The judgment in *Khairnar's* case (supra) of the learned Single Judge of this Court still holds the field. It has been observed in that judgment in *Khairnar*'s case (supra) while agreeing with the view of Saldanha, J. in *Ahir Rao* (supra), by Srikrishna, J. thus:

> 6. It is unfortunate that the attention of the Industrial Court was not drawn to a judgment of a learned single Judge (Saldanha,J.) of this Court in *S.N. Ahirrao v. Dy. Engineer, P.W.D. Dhule,* **1991 Lab.I.C. 1688.** If the attention of the Industrial Court had been drawn to the judgment, the Industrial Court would have noticed that this judgment overrules all contentions which found favour with the learned Judge of the Industrial Court. S.N. Ahirrao's case (supra) was also a case arising under the Maharashtra Employment Guarantee Act. The petitioner therein was employed as a Muster Assistant by the Deputy Engineer, P.W.D., Sub-Division, Dhule, for doing work in connection with the inspection of muster rolls of persons employed under the Employment Guarantee Scheme. After having worked for about 5 years, his services were terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947. The

> Petitioner filed a Complaint under the identical provisions of the Act and sought relief from the Labour Court at Nasik. The Labour Court held that the termination of his service was contrary to Section 25-F of the Industrial Disputes Act, 1947, and directed reinstatement without backwages. A Revision Application filed at the instance of the Respondents in the said Writ Petition, succeeded before the Industrial Court which also took the view that by virtue of Section 16 of the Maharashtra Employment Guarantee Act, Provisions of the said Act would have effect not withstanding anything inconsistent therewith in any other law for the time being in force or in any instrument having effect by virtue of such law. The Industrial Court in that case was persuaded to hold that the provisions of the Maharasthra Employment Guarantee Act prevailed over the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and consequently the Complaint was liable to be dismissed. The judgment in S.N. Ahirrao's case (supra) has clearly overruled the contention based on the provisions of the Maharashtra Employment Guarantee Act. As pointed out by the learned Judge (Saldanha, J.) the provisions of the Maharashtra Employment Guarantee Act would apply only to adult persons residing in rural areas who are willing to do unskilled manual work. As far as clerical employees like Muster Assistants are concerned, the Learned Judge held that the Employment Guarantee Scheme does not apply to him nor was he covered by the provisions of the Maharashtra Employment Guarantee Act. The learned Judge also held that the State, which must act as a model employer, cannot be heard to contend that if it has to conform with the law of the land, then it will close down the scheme and that the State must set an example by conforming to the law which is expects other citizens to abide by. The Industrial Court's order is, therefore, erroneous and liable to be interferred with.

Thus, there is a clear conflict between the judgments of Patil, J. in the case of **W.P. No.703 of 1997**, who has

not noticed several judgments of the Supreme Court as detailed above, and of Srikrishna, J. in the case of *Khairnar* (supra). In my view, it would therefore be appropriate that a larger bench of this Court decides the following:

(i) Whether the employees working as muster assistants are working in an industry as defined under section 2(j) of the Industrial Disputes Act?

(ii) Whether these persons who were employed to oversee the work of unskilled workmen, employed through the Employment Guarantee Scheme on various works like irrigation, road construction, building of canals, etc. are workmen within the meaning of section 2(s) of the ID Act?

16. The papers may be placed before the learned Chief Justice for necessary orders.