PART – A : TRADE UNIONS

T.K. Rangarajan v. *Government of Tamil Nadu*

2003 (6) SCALE 84

M. B. SHAH, J. - Unprecedented action of the Tamil Nadu Government terminating the services of all employees who have resorted to strike for their demands was challenged before the High Court of Madras by filing writ petitions under Articles 226/227 of the Constitution. Learned Single Judge by interim order *inter alia* directed the State Government that suspension and dismissal of employees without conducting any enquiry be kept in abeyance until further orders and such employees be directed to resume duty. That interim order was challenged by the State Government by filing writ appeals. On behalf of Government employees, writ petitions were filed challenging the validity of the Tamil Nadu Essential Services Maintenance Act, 2002 and also the Tamil Nadu Ordinance No. 3 of 2003.

The Division Bench of the High Court set aside the interim order and arrived at the conclusion that without exhausting the alternative remedy of approaching the Administrative Tribunal, writ petitions were maintainable. It was pointed out to the Court that the total detentions were 2211, out of which 74 were ladies and only 165 male and 7 female personnel have so far been enlarged on bail, which reveals pathetic condition of the arrestees. The arrestees were mainly clerks and subordinate staff. The Court, therefore, directed that those who were arrested and lodged in jails be released on bail.

That order is challenged by filing these appeals. For the same reliefs, writ petitions under Article 32 are also filed.

At the outset, it is to be reiterated that under Article 226 of the Constitution, the High Court is empowered to exercise its extra-ordinary jurisdiction to meet unprecedented extra-ordinary situation having no parallel. It is equally true that extra-ordinary powers are required to be sparingly used. The facts of the present case reveal that this was most extra-ordinary case, which called for interference by the High Court, as the State Government has dismissed about two lacs employees for going on strike.

Now coming to the question of right to strike - whether Fundamental, Statutory or Equitable/Moral Right - in our view, no such right exists with the government employees.

(A) There is no fundamental right to go on strike

Law on this subject is well settled and it has been repeatedly held by this Court that the employees have no fundamental right to resort to strike. In ***Kameshwar Prasad*** **v.** ***State of Bihar*** [(1962) Suppl. 3 SCR 369] this Court (C.B.) held that the rule in so far as it prohibited strikes was valid *since there is no fundamental right to resort to strike.*

In ***Radhey Shyam Sharma*** **v.** ***The Post Master General Central Circle, Nagpur*** [(1964) 7 SCR 403], the employees of Post and Telegraph Department of the Government went on strike from the midnight of July 11, 1960 throughout India and petitioner was not on duty on that day. As he went on strike, in the departmental enquiry, penalty was imposed upon him. That was challenged before this Court. In that context, it was contended that Sections 3, 4 and 5 of the Essential Services Maintenance Ordinance No. 1 of 1960 were violative of

fundamental rights guaranteed by clauses (a) and (b) of Article 19(1) of the Constitution. The Court (CB) considered the Ordinance and held that Sections 3, 4 and 5 of the said Ordinance did not violate the fundamental rights enshrined in Article 19(1)(a) and (b) of the Constitution. *The Court further held that a perusal of Article 19(1) (a) shows that there is no fundamental right to strike and all that the Ordinance provided was with respect to any illegal strike.* For this purpose, the Court relied upon the earlier decision in ***All India Bank Employees' Association* v.** ***National Industrial Tribunal*** [(1962) 3 SCR 269] wherein the Court (CB) specifically held that even very liberal interpretation of sub-clause (c) of clause (1) of Article 19 cannot lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike either as part of collective bargaining or otherwise.

In ***Communist Party of India (M)* v.** ***Bharat Kumar*** [(1998) 1 SCC 201] (***Kerala Bandh*** case), the three judge Bench of this Court approved the Full Bench decision of the Kerala High Court by holding thus:-

> There can not be any doubt that fundamental rights of the people as a whole can not be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there can not be any right to call or enforce a "Bandh" which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court particularly those in paragraph 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement.

The relevant paragraph 17 of Kerala High Court judgement reads as under:-

> 17. No political party or organization can claim that it is entitled to paralyse the industry and commerce in the entire state or nation and it is entitled to prevent the citizen not in sympathy with its viewpoints, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the state or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it.

(B) There is no legal/statutory right to go on strike

There is no statutory provision empowering the employees to go on strike.

Further, there is prohibition to go on strike under the Tamil Nadu Government Servants Conduct Rules, 1973 ("the Conduct Rules"). Rule 22 provides that "no Government servant shall engage himself in strike or in incitements thereto in similar activities." Explanation to the said provision explains the term 'similar activities.' It states that "for the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the Government or any demonstrative fast usually called "hunger strike" for similar purposes. Rule 22 A provides that "no Government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any Government Office or inside any Office premises – (a) during office hours on any working day; and (b) outside office hours or on holidays, save with the prior permission of the head of the Department or head of office, as the case may be."

(c) There is no moral or equitable justification to go o strike

Apart from statutory rights, Government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike en masse the entire administration comes to a grinding halt. In the case of strike by a teacher, entire educational system suffers; many students are prevented from appearing in their exams which ultimately affect their whole career. In case of strike by Doctors, innocent patients suffer in case of strike by employees of transport services, entire movement of the society comes to a stand still; business is adversely affected and number of persons find it difficult to attend to their work to move from one place to another or one city to another. On occasions public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike.

Further, Mr. K.K. Venugopal, learned senior counsel appearing for the State of Tamil Nadu also submitted that there are about 12 lacs Government employees in the State. Out of the total income from direct tax approximately 90% of the amount is spent on the Salary of the employees. Therefore, he rightly submits that in a Society where there is a large scale unemployment and number of qualified persons are eagerly waiting for employment in Government Departments or in public sector undertakings, strikes cannot be justified on any equitable ground.

We agree with the said submission. In the prevailing situation apart from being conscious of rights, we have to be fully aware of our duties, responsibilities and effective methods for discharging the same. For redressing their grievances, instead of going on strike, if employees do some more work honestly, diligently and efficiently, such gesture would not only be appreciated by the authority but also by people at large. The reason being, in a democracy even though they are Government employees, they are part and parcel of governing body and owe duty to the Society.

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B.R. Singh **v.** *Union of India*

(1989) 4 SCC 710

A.M. AHMADI, J. – This batch of petitions brought under Article 32 of the Constitution of India challenge certain actions taken by the officers of the Trade Fair Authority of India (TFAI) in exercise of their disciplinary jurisdiction whereby the services of certain regular workmen have been terminated and several casual or daily rated workers are rendered jobless. Put briefly, the facts giving rise to these petitions are as under:

The Trade Fair Authority Employees' Union ('Union' hereafter) was demanding housing facilities, regularisation of at least 50 per cent of casual or daily rated employees and upward revision of the salaries and allowances of the workers of TFAI. These demands were discussed with the Chief General Manager of TFAI on August 29, 1986 and thereafter from time to time but nothing concrete emerged. The case of the Union is that the Chief General Manager had assured the Union representatives that although it may not be possible to regularise the services of casual labour to the extent of 50 per cent some posts had already been identified and the Standing Committee of TFAI which was seized of the matter would take a decision at an early date. On the question of upward revision of wages and allowances the Union's case is that the Chief General Manager had given an assurance that pending final decision by the High Powered Committee of TFAI, the scales prevailing in MMTC and STC could be adopted. The grievance of the Union is that despite these assurances no action to implement the same was taken whereupon the Union wrote to the Chief General Manager on October 29, 1986 seeking implementation of the assurances at an early date and not later than November 15, 1986. It was also communicated that the workers belonging to the Union had decided to proceed on a token strike of one day on November 13, 1986. At a subsequent meeting on November 3, 1986 the General Manager of TFAI is stated to have assured the Union representatives that the Standing Committee will be requested to take up the issue on priority basis so that the outcome becomes known by the end of November 1986. No such decision was taken by the end of November, 1986; not even after the Union's reminders of December 18, 1986 and January 9, 1987 whereupon the Union wrote a letter dated January 15, 1987 to the Chief General Manager to permit the Union to hold a General Body Meeting of the Union on January 19, 1987 during lunch hours. In anticipation of such permission being granted, which had always been granted in the past, the Union despatched notices to its members to attend the meeting. However, the Chief General Manager informed the Union representatives that the permission was refused. Within minutes of the receipt of this communication, the President of the Union sent a reply stating that it was not possible to cancel the meeting at such short notice. The General Body Meeting was held as scheduled and a decision was taken to strike work on January 21, 1987 to protest against the management's failure to implement the assurances already given. On the same day, January 19, 1987, the Union served the management with a notice informing it about the decision to strike work on January 21, 1987. The management reacted by placing the President, Vice-President and Executive Members of the Union under suspension with immediate effect, i.e, with effect from January 20, 1987. This angered the striking workmen who had gathered outside the precincts of TFAI on January 21, 1987. They demanded the immediate

withdrawal of the suspension orders failing which they threatened that the strike would continue indefinitely. Intimation to this effect was served on the Chief General Manager. The management however suspended all the remaining office bearers, the executive members and leading activists of the Union w.e.f. January 23, 1987. The strike was, however, called off w.e.f. January 24, 1987, according to the Union in the larger interest of TFAI and in national interest as the President of India was to inaugurate the AHARA' 87 on January 25, 1987, while according to the management it continued for almost two weeks. Writ Petition No. 296 of 1987 is by those 42 suspended workers.

2. Now, during the strike some of the casual workers attended duty and their services remained unaffected, some others who reported for duty after the strike and were prepared to sign an undertaking in the prescribed form were given work while the remaining casual workers who did not sign such an undertaking or were late in reporting for work were denied employment. The Union's case is that out of a total workforce of about 500 casual workers, 160 did not participate in the strike and about 90 signed the undertaking and they have since been employed while the remaining casual workers are denied work. The Union sought the intervention of the Union Commerce Minister and also invoked the jurisdiction of the Labour Commissioner, Delhi Administration, with a view to finding an amicable settlement as the discharged workers were facing untold miseries. However, contends the Union, the response of the management was not positive and hence the Union was left with no alternative but to invoke this Court'' jurisdiction for an early solution of the unemployment problem faced by the workers. Writ Petition No. 271 of 1987 is by 243 casual labourers who have thus been rendered jobless.

3. Thereafter the management by their orders of March 3, 1987 terminated the services of all the 12 office bearers and Executive Committee members who had been suspended earlier in exercise of their power under the special procedure outlined in Rule 32 of the TFAI Employees (Conduct, Discipline and Appeal) Rules, 1977 ('the Rules'). This rule *inter alia* empowers the Board of TFAI to impose any of the penalties specified in Rule 25 (which includes penalties form censure to dismissal), without holding an inquiry if the Board is satisfied for reasons to be stated in writing that it is not practicable to hold such inquiry or in the interest of the security of the Authority it is not expedient to hold such inquiry. This provision overrides the need to hold a departmental inquiry under Rules 27 to 29 of the Rules. The Board in the impugned orders of dismissal has assigned three reasons in support of its decision that it is not practicable to hold an inquiry, namely

> (i) you by yourself and together with and through other associates have threatened, intimidated and terrorised the Disciplinary Authority so that it is afraid to direct the inquiry to be held;
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> (ii) you the employee of Trade Fair Authority of India particularly through and together with your associates have terrorised and threatened and intimated witnesses who are likely to give evidence against you with fear of reprisal as to prevent them from doing so; and
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> (iii) as an atmosphere of violence and of general indiscipline and insubordination has been created by a group of suspended employees.

The Board has also stated in the impugned order that it is not expedient in the interest of security of the TFAI to hold an enquiry in the manner provided by the Rules. Annexure I to each order sets out the reasons which impelled the Board to visit the 12 employees with the extreme penalty of dismissal. These 12 dismissed workers have challenged the orders of dismissal by their Writ Petition No. 627 of 1987.

6. In all the writ petitions Mr. N.N. Kesar, Manager (Admn.) TFAI has filed his counter contending that as the petitions require collection of facts this Court should refuse to entertain these petitions and should relegate the petitioners to the industrial tribunal or the concerned High Court. According to the deponent TFAI had to take action against the office bearers of the Union as they had created an atmosphere of violence and had paralysed the smooth functioning of TFAI from November, 1986 onwards. Instances of insubordination, threats, violence and lack of discipline have been enumerated to show that officers of TFAI found it difficult to carry out their functions and duties because of constant fear to themselves and their kith and kin. Even though permission for holding a General Body Meeting on January 19, 1987 within the precincts of TFAI was refused, the meeting was held at which inflammatory and provocative speeches were made by the Union leaders. Extracts from the speeches of the various Union leaders have been set out in the counter to acquaint the court with the type of atmosphere that prevailed at a point of time when several important foreign delegates and VIPs were attending the International Fair held by TFAI. The secret reports which were received from the officers of TFAI at different levels also suggested that trouble was brewing and immediate firm action was necessary. Therefore when the management learned that the employees had decided to go on a token strike on January 21, 1987, it took action of suspending some of the officer bearers of the Union. After the strike was prolonged up to January 23, 1987, TFAI had to make alternative arrangements including security arrangements to ensure that no untoward incident occurred during the visit of foreign VIPs and more particularly during the visit of the President of India who was to inaugurate the AHARA' 87 on January 25, 1987. Even during the visit of the President certain employees posted themselves at the main gates along with the President, Vice-President, General Secretary and Secretary of the Union for picketing. Since certain other inaugurations by VIPs were to take place between January 28, 1987 and February 2, 1987, TFAI was constrained to file a Suit No. 263 of 1987 in the Delhi High Court against the Union and seven officer bearers to restrain them from preventing and obstructing the entry of delegates, guests, dignitaries, etc. into the Pragati Maidan where TFAI was having its fair. An *ex-parte* injunction was granted prohibiting picketing, slogan shouting etc. within 75 metres of all gates leading to the Fair as shown in the map appended to the suit. It will thus be seen that according to TFAI the workers' agitation was not a peaceful one as is alleged by the petitioners. It was in the backdrop of these facts that the Board decided to terminate the services of the 12 employees by virtue of the power conferred on it by Rule 32 of the Rules. The reasons which impelled the Board to take this drastic action have been set out in the annexure appended to each order of dismissal. TFAI, therefore, contends that the action taken against the 12 erring workers is just, legal and proper and this Court should refuse to interfere with the same. So far as the suspended employees are concerned TFAI contends that it has power under Rule 22 of the Rules to suspend erring delinquents pending inquiry. Such suspended employees are entitled to suspension allowance paid at 50 per cent of salary and

allowances. It is denied that TFAI has used the power of suspension as a coercive measure. It is however stated that the correct number of suspended employees is 34 as named in the counter. Out of these 34 employees, the suspension orders of 33 workmen have since been revoked on acceptance of their explanation. Hence the suspension order that survives is against Peon Umed Singh only, who is receiving suspension allowance as per rules.

7. Insofar as the casual labour is concerned, it is contended that TFAI had taken over the maintenance of Pragati Maidan from CPWD w.e.f. January, 1983. The Standing Committee had, therefore, sanctioned a certain number of posts of the Engineering staff for this purpose. A number of daily wages posts on muster roll were created from time to time and were filled in by both skilled and unskilled labour. A proposal for regularising such employees was pending before the Standing Committee which had been called for information. It was however tentatively decided that 85 posts may be considered urgently for regularisation. This proposal was cleared in January 1987. The matter was pending with the Internal Works Study Unit in the Ministry of Commerce and their report was awaited. It was, therefore, contended that TFAI was always sympathetic in its approach and yet the Union gave a call for a strike on January 19, 1987. The TFAI denies that it did not provide work to casual labour when the reported on January 24, 1987 or thereafter or that they demanded any such undertaking as alleged.

10. When these petitions reached hearing before this Court on October 13, 1987, this Court passed a common order directing the Chief Secretary of Delhi Administration to spare the services of a Judge of the Labour Court to look into the facts of these cases and finalise its report so as to reach the Registry of this Court on or before December 18, 1987. Since the inquiry could not be finalised within the time allowed the time was extended up to October 31, 1988. Shri Bhola Dutt, Presiding Officer, Labour Court (VII) submitted his report on October 29, 1988. Before finalising its report the Labour Court gave an opportunity to the contesting parties to file their pleadings. Issues were famed thereafter, parties were permitted to lead oral and documentary evidence, counsels were heard on the evidence tendered and only thereafter the Labour Court recorded its findings. It came to the conclusion that the 243 casual labourers had been doing conservancy work since several years and all of them were denied work when they reported for duty on January 24, 1987 and thereafter because the work of Safai Kamdars was handed over the MCD w.e.f. January 22, 1987. It, however, came to the conclusion that denial of work to all the 243 casual workers was not justified. So far as the only suspended employee Peon Umed Singh is concerned, the Labour Court opined that mere participation in the strike called by the Union would not furnish a sufficient cause to order large scale suspension of employees much less termination of their employment. Since 33 of his colleagues similarly suspended were taken back in service and there was no justification to single out Umed Singh for different treatment, more so when disciplinary action is initiated or contemplated against him. With regard to the termination of Raju driver's service, the Labour Court came to the conclusion that the management had acted in an illegal manner. In the first place it was not possible to accept the reason that during the summer season there is paucity of work and hence the provisional offer made on July 4, 1987 had to be cancelled within twenty days on July 25, 1987. It found it difficult to believe that within such a short period there was a slump in work necessitating cancellation of the order. As to the second reason regarding his conviction under the Motor Vehicles Act it pointed out

that the allegation that he had abused Amar Singh was not inquired into and the delinquent was not given an opportunity to explain his conduct. Certain other allegations by the management regarding his behaviour e.g. absence without prior intimation, etc., all amount to misconduct for which a departmental enquiry was necessary and in the absence of such an enquiry the order was unsustainable. It therefore, held that the termination of Raju's services was illegal.

11. The case of the two security guards has been dealt with in detail by the Labour Court. The Labour Court points out that the management decided to refuse work to Bansi Dhar as his performance was not found to be satisfactory. He was served with memos dated December 25, 1984, February 10, 1986 and February 20, 1987 with a warning to improve his performance failing which the management would be constrained to refuse work to him. The note submitted by the Chief Security Officer on March 3, 1987 that his termination may be considered if he is found absent or indisciplined in future is indicative of the fact that the management desired to give him an opportunity to improve. Nothing had happened between March 3, 1987 and April 2, 1987 to warrant the termination of his service. The Labour Court, therefore, held that the termination of his employment by the order of April 2, 1987 was not sustainable. As regards his companion Vipti Singh the management pointed out that apart from the fact that his service was not satisfactory as is reflected by the memos of August 14, 1985 and October 20, 1986, he was found to have signed the attendance register from March 23, 1987 to March 29, 1987 even though he was admittedly absent on those days. The Labour Court examined this ground in detail and came to the conclusion that even though the workman had signed his presence on those dates, some doubt arose on account of absence of cross marks in the register. The Labour Court, therefore, came to the conclusion that the termination of the service was also not justified.

12. Taking note of the fact that the Union was demanding the upward revision of wages of non-executive staff, housing facility and regularisation of casual labour and the management's failure to accede to the demands notwithstanding the meetings held on August 20, 1986, November 3, 1986 and January 19, 1987, the Labour Court came to the conclusion that the strike was legal and justified, peaceful and non-violent and for a duration of only three days. The Labour Court also came to the conclusion that there was no justification for resorting to the exercise of extraordinary powers under Rule 32 of the Rules. In the view of the Labour Court participation in strikes and slogan shouting are part of trade union activity and hence it was not legal and proper to visit the 12 Union leaders with the extreme punishment of dismissal from service. It, therefore, held that their dismissal was illegal, unjustified and wholly arbitrary.

13. All the above findings of the Labour Court have been assailed by the TFAI in the objections to the report. It is not necessary for us to indicate in detail the nature of the objections but suffice it to say that according to TFAI the findings reached by the Labour Court are one-sided, perverse and contrary to the evidence on record. We have perused the objections as well as the reply filed thereto by the petitioners.

14. From the above resume it clearly emerges that the charter of demands put forth by the Union was pending consideration. The main demands were three in number, namely, (i) for upward revision of wages, (ii) for regularisation of services of casual labour and, (iii) for

providing housing facilities to the employees. Efforts to settle these pending issues through negotiations were made at the level of the Chief General Manager and it appears that this response was not negative. It appears that the question of regularisation of casual and daily rated workers was referred to the Standing Committee of the Board which had taken the tentative decision to create 85 posts on the regular establishment for regularisation. This proposal was forwarded to the IWS unit of the concerned Ministry for approval. However since the final decision was delayed the Union leaders become restive. The Union representatives, therefore, decided to call a General Body Meeting to decide on the future course of action. On January 15, 1987 it wrote to the management to permit it to hold a meeting on January 19, 1987. Notwithstanding the refusal of the permission the Union was compelled to hold the meeting as it had informed its members and it was not possible to shift the venue at short notice. The angered leaders who addressed the workers condemned the management's action in refusing to solve the outstanding problems of the workers in strong language. We have perused the extracts from their speeches on which TFAI relies. The language used is no doubt harsh and it would have been proper if such language had been avoided.

15. Counsel for TFAI also strongly contended that since the strike was illegal the workers are not entitled to any relief. We see no merit in this submission. The right to form associations or unions is a fundamental right under Article 19(1)(c) of the Constitution. Section 8 of the Trade Unions Act provides for registration of a trade union if all the requirements of the said enactment are fulfilled. The right to form associations and unions and provide for their registration was recognised obviously for conferring certain rights on trade unions. The necessity to form unions is obviously for voicing the demands and grievances of labour. Trade unionists act as mouthpieces of labour. The strength of a trade union depends on its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively with the managements. This bargaining power would be considerably reduced if it is not permitted to demonstrate. Strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g., go-slow, sit-in, work-to-rule, absenteeism, etc. and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore, the right to strike is an important weapon in the armoury of the workers. This right has been recognised by almost all democratic countries. Though not raised to the high pedestal of a fundamental right, it is recognised as a mode of redress for resolving the grievances of workers. But the right to strike is not absolute under our industrial jurisprudence and restrictions have been placed on it. These are to be found in Sections 10(3), 10-A(4-A), 22 and 23 of the Industrial Disputes Act, 1947 ('ID Act' for short). Section 10(3) empowers the appropriate government to prohibit the continuance of a strike if it is in connection with a dispute referred to one of the for a created under the said statute. Section 10-A(4-A) confers similar power on the appropriate government where the industrial dispute which is the cause of the strike is referred to arbitration and a notification in that behalf is issued under Section 10-A(3-A). These two provisions have no application to the present case since it is nobody's contention that the Union's demands have been referred to any forum under the statute.

16. The field of operation of Sections 22 and 23 is different. While Section 10(3) and Section 10-A(4-A) confer power to prohibit continuance of strike which is in progress,

Sections 22 and 23 seek to prohibit strike at the threshold. Section 22 provides that no person employed in a public utility service shall proceed on strike unless the requirements of clauses (a) to (d) of sub-section (1) thereof are fulfilled. The expression 'public utility service' is defined in Section 2(n) and indisputably TFAI does not fall within that expression. Section 23 next imposes a general restriction on declaring strikes in breach of contract during pendency of (i) conciliation proceedings, (ii) proceedings before labour Court, Tribunal or National Tribunal, (iii) arbitration proceedings and (iv) during the period of operation of any settlement or award. In the present case no proceedings were pending before any of the aforementioned fora nor was it contended that any settlement or award touching these workmen was in operation during the strike period and hence this provision too can have no application. Under Section 24 a strike will be illegal only if it is commenced or declared in contravention of Section 22 or 23 or is continued in contravention of an order made under Section 10(3) or 10-A(4-A) of the ID Act. Except the above provisions, no other provision was brought to our attention to support the contention that the strike was illegal. We, therefore, reject this contention.

17. The next question is whether the material on record reveals that the office bearers of the Union had given threats to officials of TFAI as alleged. The Labour Court has negatived the involvement of office bearers of the Union is giving threats either in person or on telephone. We have perused the evidence on record in this behalf and we are inclined to think that there were angry protests and efforts to obstruct the officers from entering the precincts of TFAI but there is no convincing evidence of use of force or violence.

18. From what we have discussed above we are of the view that although TFAI was sympathetic to regularisation of service of the casual of service of the casual workers, since the proposal had to pass through various levels it was not possible to take an early decision in the matter. It was held up in the Ministry for which TFAI could not be blamed. So also the proposal to revise the wages of non-executive staff was under consideration since some time. However, the Union leaders lost patience and took a decision to proceed on strike on the eve of the President's visit to TFAI. This action of the Union impelled TFAI to make alternative arrangements. It, therefore, dismissed the 12 Union leaders invoking Rule 32 of the Rules.

19. On going through the material placed before the Labour Court, we feel that the criticism levelled by TFAI that it exceeded its brief and has betrayed a somewhat one-sided approach cannot be said to be wholly misplaced. We have, however, looked to the bare facts found by it. We are however disinclined to analyse the evidence before the Labour Court because we are of the view that even though TFAI was not averse to the demands of labour it could not take a final decision at an early date for want of approval from the concerned Ministry. This angered the Union representatives more particularly because the executive staff was granted upward revision of salary, allowances, etc., and hence they decided to call a meeting of the general body to decide on the future course of action. In their frustration they decided to put pressure by proceeding on strike. During the strike period certain events happened which we wish were avoided. But fortunately nothing destructive, meaning thereby damaging to the property of TFAI, took place. A few brushes and exchange of strong words appear to have taken place, which are described as threats by the management. The vast mass of labour was only responding to the call of the Union. Even the Union representatives were

acting out of frustration and not out of animosity of the officers. The facts of this case, therefore, demand that we appreciate the conduct of both sides keeping in mind the prevailing overall situation. While the workers were frustrated for want of an early solution, the management was worried because of the impending visit of the President on January 25, 1987. Instead of trying to lay the blame at the door of either party, which would only leave a bitter taste for long, we think we should resolve the crisis in the larger interest of the institution.

20. Taking an overall view of the facts and circumstances which emerge from the oral as well as documentary evidence placed on record, we are of the opinion that while some of the Union leaders acted in haste, they do not appear to have been actuated by any oblique motive. The management also took action against the workmen not because it was unsympathetic towards their demands but because of the anxiety caused to them on account of untimely action taken by the Union only a few days before the President's scheduled visit to the Fair. The management also felt hurt as its reputation was at stake since several dignitaries from abroad were participating in the Fair. Its action must, therefore, be appreciated in this background.

21. The interest of the institution must be paramount to all concerned including the workmen. At the same time this Court cannot be oblivious to the economic hardships faced by labour. We have already pointed out earlier how both parties reacted to the tense atmosphere that built up over a period of time. The facts found by the Labour Court clearly show that while the labour was frustrated as its demands were outstanding since long and they were finding it difficult to combat the inflation without an upward revision in wages, etc., the management was worried about TFAI's reputation likely to be lowered in the eyes of visiting dignitaries because of certain events that were happening due to the workers' agitation. In these circumstances it would be unwise and futile to embark upon a fault finding mission.

22. Keeping the interest of the institution in mind and bearing in mind the economic hardships that the labour would suffer if the impugned orders are not set aside, we think that it would be desirable to restore the peace by directing the reinstatement of the workers. However, so far as the case of the security guard Vipti Singh is concerned, we are constrained to say that the material on record does disclose that he had signed the attendance register showing his presence from March 23, 1987 to March 29, 1987 even though he was in fact absent on those days. His explanation in this behalf is far from convincing. We are, therefore, of the opinion that he deserves punishment, but not the extreme punishment of dismissal from service. We think that the ends of justice would be met if we direct his reinstatement without back wages.

23. So far as the case of driver Raju is concerned, it must be pointed out that the management cancelled the offer of July 4, 1986 by the letter of July 25, 1986 because of his conviction under Sections 87 and 113 of the Motor Vehicles Act and his so-called outrageous behaviour with the dealing assistant on July 22, 1986. These being clearly acts of misconduct, the action of the management must be held to be penal in nature and cannot be sustained as it was taken without hearing the delinquent. To hold an enquiry against him at this late stage is not desirable.

24. In the result all the writ petitions are allowed and the rule is made absolute in each case to the extent indicated hereinafter. The management will prepare a list of casual/daily rated workers who were its employees prior to the strike on January 21, 1987 in accordance with their seniority, if such a list does not exist. TFAI will provide them work on the same basis on which they were given work prior to the strike. After the seniority list is prepared TFAI will absorb 85 of the seniormost casual workers in regular employment pending finalisation of the regularisation scheme. TFAI will complete the regularisation process within a period of 3 months from today. TFAI will determine the number of casual employees who would have been employed had they not proceeded on strike. The wages payable to such casual employees had they been employed for the period of 6 months immediately preceding the date of this order will be worked out on the basis of actual labour employed and the amount so worked out will be distributed amongst the casual employees who report for work in the next three months after TFAI resumes work to casual labour. Peon Umed Singh, security guard Bansi Dhar and driver Raju will also be reinstated in service forthwith. They too will be paid back wages (less suspension allowance, if any) for a period of 6 months immediately preceding this order. So far as driver Raju is concerned he will be absorbed in regular service as per the offer made in the letter of July 4, 1987 disregarding the subsequent communication of July 25, 1987. The security guard Vipti Singh will also be reinstated in service but without back wages. In the case of the 12 dismissed workers we are, on the facts placed before us, of the view that the circumstances did not exist for the exercise of extraordinary powers under Rule 32 of the Rules. The orders terminating the services of the 12 Union representatives are therefore set aside and they are ordered to be reinstated in service forthwith and back wages covering a period of 6 months immediately preceding the date of this order. They should be reinstated forthwith. In view of the above directions no further order is required on the CMP. TFAI will pay Rs. 5000 in all by way of costs to the Union.

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Rangaswami **v.** *Registrar of Trade Unions*

AIR 1962 Mad. 231

RAMACHANDRA IYER, J. – This is a petition under S. 11 of the Trade Unions Act seeking to set aside the order of the Registrar of Trade Unions, Madras refusing to register the union of employees of the Madras Raj Bhavan as a trade union under the Trade Unions Act XVI of 1926, which for the sake of brevity I shall hereafter refer to as 'the Act.'

2. In the Raj Bhavan at Guindy, a number of persons are employed in various capacities such as household staff, peons, chauffers, tailors, carpenters, maistries, gardeners, sweepers etc. There are also gardeners and maistries employed at the Raj Bhavan at Ootacamund. Those persons are employed for doing domestic and other services and for the maintenance of the Governor's household and to attend to the needs of the Governor, the members of his family, staff and State guests. There are two categories of employees: (1) those whose services are more or less of a domestic nature. They number 102. The services of these persons are pensionable and are governed by certain rules framed by the Governor of Madras; and (2) those who formed part of the work charge establishment consisting of maistries and gardeners. There are 33 such persons employed at Guindy and 35 at Ootacamund. Their duties consist in maintaining the gardens. Their service is not pensionable but they would be entitled to gratuity at certain rates. There are separate rules prescribing the conditions of their service framed under the proviso to Art. 309 of the Constitution. Both the categories of the staff are appointed by and are under the disciplinary control of the Comptroller.

With the object of securing better service conditions and to facilitate collective bargaining with the employer, the employees formed themselves into a union called the Madras Raj Bhavan Workers' Union. On 9.2.1959, seven of the employees applied to the Registrar of Trade Unions, Madras, for registration of their union as a trade union under the Trade Unions Act of 1926. The applicants did not however claim before the Registrar that the employees were engaged in either a trade or an industry; the claim was that their services could not be held to be purely domestic services and therefore their union would be entitled to the benefits of registration under the Trade Unions Act. The Registrar was of the view that before a union can be registered, the members thereof must be connected with a trade or industry or business of an employer, and that condition not being fulfilled in the present case, the employees could not be held to be workmen within the meaning of the Act to entitle them to the registration; the application for registration was rejected.

3. Mr. Ramsubramaniam, who appeared for the petitioners, impugned the correctness of the view taken by the Registrar. His argument ran thus. The term 'workman' under the Act would include one employed in an industry. Although there is no definition of the term industry in the Act itself, the definition of the term given in the Industrial Disputes Act should be adopted for ascertaining its meaning as both the enactments related to the same subject, viz., the betterment of the conditions of labour in the country. If that were done, the term "industry" which is defined to include an undertaking would be comprehensive enough to cover the case of employees like these engaged in services at the Raj Bhavan who systematically do material service for the benefit of not merely the members of the Governor's household but also to visitors and guests as well. Therefore, the employees in the

present case should be held to be employed in an undertaking by the employer within the meaning of that term. Further, as the Comptroller directs the sale of unserviceable articles as well as surplus produce of the gardens in the Raj Bhavan, the activity of the employer should be held to partake the character of a trade or business as well.

4. I am however unable to accept the argument. The question whether Government servants who form an association amongst themselves would have their union registered under the Trade Unions Act, was considered by me in O.P. No. 312 of 1958. I expressed the opinion that employees under Government whose service was regulated by statutory rules could not form themselves into a union so as to have it registered as a trade union. I am informed that the judgment in that case is the subject-matter of an appeal which is pending. It is, however, unnecessary to decide this case on the basis of that judgment as I am of the view that the claim of the petitioners has to fail on an independent ground as well, a ground which was not dealt with by me in the former case.

5. Under Sec. 4 of the Trade Unions Act, a trade union could apply for and obtain registration therefor. That provision states:

> Any seven or more members of a trade union may by subscribing their names to the rules of the trade union and by otherwise complying with the provisions of this Act with respect to registration apply for registration of the trade union under this Act.

6. It is therefore necessary to consider what would be a trade union. Section 2(h) defines a trade union thus:

> Trade union means any combination whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen or workmen or between employers and employers or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.

The term "workmen" has not been independently defined in the Act. But in the definition of the term "trade dispute" (which defines such dispute as one between employers and workmen etc.), the definition of the term "workmen" is found. That runs:

> 'workman' means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

The term "trade union" as defined under the Act contemplates the existence of the employer and the employee engaged in the conduct of a trade or business. The definition of the term "workmen" in Sec. 2(g) would prima facie indicate that it was intended only for interpreting the term "trade dispute." But even assuming that that definition could be imported for understanding the scope of the meaning of the term "trade union" in S. 2(h), it is obvious that the industry should be one as would amount to a trade or business, i.e., a commercial undertaking. So much is plain from the definition of the term "trade union" itself. I say this because the definition of "industry" in the Industrial Disputes Act is of wider significance. Section 2(j) of the Industrial Disputes Act which defines "industry" states its meaning as

> Any business, trade undertaking, manufacture or calling of employers and includes any calling, services, employment, handicraft or industrial occupation or avocation of workmen.

7. An undertaking which is not of a commercial nature will come within the scope of that enactment [vide ***State of Bombay* v. *Hospital Mazdoor Sabha***, AIR 1960 SC 610]. The object behind the Industrial Disputes Act is to secure industrial peace and speedy remedy for labour discontent or unrest. A comprehensive meaning of the term "industry" was evidently thought necessary by the legislature in regard to that Act. But the same thing cannot be said of the Trade Unions Act. The history and object of that enactment show that it was intended purely to render lawful organisation of labour to enable collective bargaining. The provisions of the Act contemplate the admission of even outsiders as members and participation in political activities. That would itself dictate that the benefits conferred by the act should be enjoyed by a clearly defined category of unions. I am very doubtful whether at all it could be said that the Industrial Disputes Act and the Trade Unions Act form as it were a system or code of legislation so that either could be read together as in *pari materia*, that is, as forming one system and interpreting one in the light of another.

8. There can be no doubt that if a trade union is interpreted as one connected with a trade or a business, it cannot be said that the employer in the present case is having such a trade or business. This however is subject to the consideration of the question whether the sale of unserviceable materials and surplus garden produce will amount to a trade or business activity. I shall refer to it a little later.

9. Let me assume however that the definition of the term industry in S. 2(j) of the Industrial Disputes Act will apply to the Trade Unions Act. It has then to be seen whether the authorities of the Raj Bhavan could be held to be employers engaged with the workmen in any undertaking within the meaning of the term "industry" in the Industrial Disputes Act.

10. In ***State of Bombay* v. *Hospital Mazdood Sabha*,** the question arose whether the employees in a hospital run by the State could be held to be engaged in an undertaking of the State so as to entitle them to raise an industrial dispute. The Supreme Court observed:

> It is clear, however, that though S. 2(j) (Industrial Disputes Act) uses words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings. If all the words used are given their widest meaning all callings would come within the purview of the definition; even service rendered by a servant purely in a personal or domestic matter or even in a casual way would fall within the definition. It is not and cannot be suggested that in its wide sweep the word "service" is intended to include service howsoever rendered in whatsoever capacity and for whatsoever reason.

11. The Supreme Court held that the definition of the term "industry" in S. 2(j) was wider than the conception of trade or business as commonly understood. But an undertaking in order to come within that definition would be an activity which involves the co-operation of the employer and the employees with the object of the satisfaction of material human needs, if organised or arranged in a manner in which a trade or business is generally organised or

arranged, and if it were not of a casual nature nor one for oneself or for pleasure. It is well known that in an industry, capital and organisation, on the one hand, and labour, on the other, co-operate to achieve industrial production. Therefore, a mere personal service, however much it might have been organised, would not possibly be an undertaking within the meaning of the Act; the essential condition is only personal service given to the employer.

12. Two distinctive features of an industry therefore are (1) that the employer as well as the employees should be engaged in the industry, however wide the meaning of the term might be; and (2) there should be co-operation between both of them for achieving the particular result. The first of the two attributes of an industry is succintly stated by Isaacs, J., in ***Jambunna Coal Mine No Liability*** **v.** ***Victorian Coal Miners Association*** [6 CLR 309, 370] thus:

> An industry contemplated by the Act is apparently one in which both employers, and employees are engaged, and not merely industry in the abstract sense, or in other words the labour of the employees given in return for the remuneration received from his employer. As suggested, not only the words defining "industry" itself but also by Schedule B and by such a phrase in the definition of "industrial dispute" as employment in industries carried on by or under the control of the Commonwealth etc., an "industry" as intended by Parliament seems to be a business etc., in which the employer on his own behalf is engaged as well as the employees in his employment. Turning to the specific definition of "industry," it rather appears to mean a business (as merchant), a trade (as cutler), a manufacturer (as a flour miller), undertaking (as a gas Company), calling (as an engineer) or service (as a carrier) or an employment (a general term like 'calling' embracing one of the others, and intended to extend to vocations which might not be comprised in any of the rest) all of these expressions so far indicating the occupation in which the principal, as I may call him, is engaged whether on land or water. If the occupation so described is one in which persons are employed for pay, hire, advantage, or reward, that is, as employees, then, with the exceptions stated, it is an industry within the meaning of the Act.

13. There can thus be no industry where the employer is not engaged in common with the employees with the definite objective of the achievement of the material needs of humanity and that in an organised manner. In the definition of the term "trade union" to which I made reference earlier, the regulation of the relationship contemplated is in regard to the condition of service of employees which postulates the existence of an employer who is concerned in the business, trade or industry. It has therefore to be seen whether in the circumstances of the case it can be said that persons in control of the Raj Bhavan can be held to be an employer in an industry however widely that term may be understood. The answer to that question presents no difficulty and can only be in the negative.

14. The decision in ***State of Bombay*** **v.** ***Hospital Mazdood Sabha*****,** emphasised that the activity contemplated by term "industry" in section 2(j) of the Industrial Disputes Act involved the co-operation of the employer and the employees.

15. I cannot agree with the learned counsel for the petitioners, that the mere fact that employees serve the visitors and State guests of Raj Bhavan, nor the fact that unserviceable materials and surplus produce of the gardens of the Raj Bhavan are occasionally sold would show that there was co-operation between the employer and the employees for the purpose of a trade or business. The services rendered to the State guests are personal services to them and indirectly to the employer. The occasional sales of unserviceable articles and garden products are incidents of the ordinary administration of Government property. They are done in accordance with certain rules framed by the Government. They would not amount to a trade or business.

17. To sum up, even apart from the circumstance that a large section of employees at Raj Bhavan are Government servants who could not form themselves into a trade union, it cannot be stated that the workers are employed in a trade or business carried on by the employer. The services rendered by them are purely of a personal nature. The union of such workers would not come within the scope of the Act so as to entitle it to registration thereunder.

18. The order of the Registrar of Trade Unions rejecting the application of the petitioners is, therefore, correct. This petition is dismissed with costs.

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The Tamil Nadu Non-Gazetted Government Officers' Union, Madras **v.** *The Registrar of Trade Unions*

AIR 1962 Mad. 234

ANANTANARAYANAN, J. – The Tamil Nadu Non-Gazetted Government Officers' Union is a Services Association which has been recognised by Government, and the membership of which is open, according to Rule 7 of its constitution, to all Non-Gazetted Government Officers employed under the Government of Madras except the Executive Officers of the Police and Prisons Departments and the last grade Government servants. The objects of this Association are set forth in Rule 4 of the Constitution, and it is seen that they are beneficent and ameliorative in character, designed along the lines of promoting the welfare of the members in multiple directions. The Association represented by ten of its members applied on 23-12-1957 to the Registrar of Trade Unions, Madras, for registration as a Trade Union, under section 5 of the Indian Trade Unions Act (Act XVI of 1926). In a brief order, the Registrar rejected this application, in which, after a reference to Secs. 2 (g) and 2 (h) of the Act, he held that such an Association of ministerial employees of the Administrative Departments of offices of the Government of Madras could not claim to be a Trade Union at all and was not eligible for registration under the Act. Admittedly, against such an order declining registration an appeal is provided for under section 11 of the Act and this was duly preferred. The learned Judge who dealt with the proceeding (Rama Chandra Iyer, J., as he them was) delivered a judgment in which he had occasion to trade, in some detail, the history of the Trade Union movement in the United Kingdom, in order to elucidate certain fundamental principles. This appeal is before us as preferred by the Union and its secretary, from the order of the learned Judge.

(2) We shall set forth, a little subsequently, the relevant definitions and provisions of the Indian Trade Unions Act, as well as certain definitions in the Industrial Disputes Act XIV of 1947; though the learned Judge was definitely of the view that these two enactments are not in *pari materia* and do not together constitute any code or legislation it is at least indisputable that sections of the Industrial Disputes Act, 1947, are also very relevant for purposes of comparative analysis. But before doing this, it is essential for an appreciation of the basic issues, to summarise the grounds upon which the learned Judge (Rama Chandra Iyer, J.,) rejected the petition before him. After referring to the definition of "Trade Union" in section 2 (h) of the Trade Unions Act, the learned Judge pointed out that a vital consideration would be the content or significance of the word "workmen" as occurring in section 2 (h) and he was of the view that this word primarily signify only manual labourers or workers of that class. This was one ground upon which the learned Judge ultimately concluded that civil servants of the present Association could not be considered as workmen at all. Next the learned Judge pointed out that the concept of "collective bargaining", which is the rationale behind the Trade Union movement and the existence of the Trade Unions was wholly inappropriate when applied to Government servants.

This was all the more so in this country where the civil service was not a mere tenure at the pleasure of the Crown, as in the United Kingdom, but where constitutional safe-guards were themselves the subject of elaborate statutory rules. The Indian Trade Unions Act

contemplated not merely collective bargaining, but also the permeation of the Trade Union by outside influences to a certain extent (Secs. 21 and 22) and definite participation in politics (Sec. 16). These were elements that had to be totally eschewed, in the public interest itself, with regard to the civil services. A strike, the acknowledged weapon of Labour organisations, must be considered inconceivable as a normal feature of the relationship between the State and its civil servants, at least with regard to essential state functions. This was another vital ground on which the learned Judge considered that this Services Association was not a trade union and could not be registered as such. Finally, the learned Judge referred to the Memorandum of Association and the objects as specified in Rule 4, to which we have made earlier reference. He stressed that those objects were benevolent and ameliorative and that they could not sustain the interpretation that the association existed for "regulating the relations between workmen and employers (State)" or, in brief, for "collective bargaining" with the State. Upon all these grounds, the petition was dismissed.

(4) As we have stated earlier, section 5 of the Act entitles a Trade Union to apply for registration, and provides that the application shall be accompanied by a copy of the rules of the Trade Union, and statement of specified particulars. Under section 5 (2), where a Trade Union has been in existence for more than one year before the making of the application for its registration, a further general statement of assets and liabilities is required to be submitted. Under section 7 (1) of the Act the Registrar may call for further information, for the purpose of satisfying himself that an application complied with the provisions of sections 5 and 6 of the Act and that the Trade Union is entitled to registration. The Registrar may refuse to register a Trade Union until such information is supplied. Section 8 relates to registration proper, and section 11 provides for an appeal by a person aggrieved by any refusal of the Registrar to register a Trade Union. This may be the convenient context for nothing an argument of the learned counsel for the appellant Union (Sri A. Ramachandran). The learned counsel argues that where as in this case the Registrar did not call for any further information under section 7. He has really no jurisdiction to decline registration. This argument is obviously unsustainable.

The very terms of section 8 are that the Registrar has to register the Union "on being satisfied that the Trade Union has complied with all the requirements of this Act"; this shows that where the definitions under sections 2 (g) and 2 (h) are themselves inapplicable to the so-called Union, the Registrar has every power to decline the registration. It is for the specified purpose of granting redress against the erroneous exercise of such power that the appeal is provided for under section 11. Section 16 of the Act, as noted by us earlier, enables the Union to constitute a separate fund for political purposes and objects and to pursue those purposes, enumerated in section 16 (2). Sections 17 and 18 refer to the immunity of the members of a registered Trade Union from criminal prosecution in certain respects, and similarly from civil suits in certain cases. Under sections 21 and 22, there is room for the introduction of outsiders as office bearers into the executive of a registered Trade Union, or of outsiders as members, after registration.

(5) Turning now to the Industrial Disputes Act (Act XIV of 1947), we find the very important definition of "industry" in section 2 (j) of the Act in the following terms –

> Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

An equally important definition is that of "workmen" in section 2 (s) in the following term:-

With regard to the present appeal, section 9-A concerning notice of change in the conditions of service is important; clause (b) of the proviso specifically exempts from such notice, workmen who are

> Persons to whom the Fundamental and Supplementary rules, Civil Services (Classification Control and Appeal) Rules … apply.

This certainly suggests that at least employees of the quasi-Government organisations, such as the Industrial undertakings or Insurance corporations are persons to whom the Industrial Disputes Act may apply. We may further note that under section 36 (1) of this Act, a workman who is a party to an industrial dispute is entitled to be represented in a proceeding under the Act by "an officer of a registered Trade Union of which is a member". Learned counsel (Sri Ramchandran) argues that the appellant Union is keen upon registration under the Trade Unions Act, not merely for the privileges or immunities conferred under sections 17 and 18 of the Act, which we have noticed earlier, but even more importantly for this power or being represented in an industrial dispute, by the Union.

(7) Upon one ground, we do not think that it is really necessary to follow the learned Judge into the analysis that he has made. The learned Judge refers to the definitions of "workmen" in the Concise Oxford Dictionary and Wharton's Law Lexion, and concludes that the term could only fairly characterise persons engaged in manual labour semi-skilled occupations for wages, and could certainly not include civil servants of the State. It is certainly true that such a restrictive interpretation appears to have prevailed at one time, and to have found expression in several Acts in the United Kingdom, such as the Bankruptcy Act 1883, Employers and Workmen Act, 1875, Truck Acts 1887 etc., (see Burrows Words and Phrases, Vol. 5, page 527). But, more and more as the industrial structure expanded, such a limited definition became out of place; further, it was clearly impossible to sustain, him a logical point of view, a distinction between brain-workers and manual workers, in relation to 'industry' broadly conceived. One instance suggested to us may be significant. It would be difficult to hold that a typist does not do manual labour; literally his work is executed with his hands conforming to the etymological sense of the definition. But equally, it would be impossible to deny that a typist is also a brain-worker, or to deny that he is a "workman" in industry. Obviously, springing from such causes, we find that the earlier attitude is no longer maintained, particularly in Industrial law in the United States of America. For instance, in ***Corpus Juris Secundum*** (Vol. 98 page 834), "workman" is defined as – "a tailer, a worker, one who works in any department of physical or mental labour". Also see the definition furnished by Bouvier cited in "Works and Phrases" Permanent Edn. Vol. 45, page 508 as "one who labours; one who is employed in some business for another." Finally in N. A. Citrine's (now Lord) "***Trade Union Law***" (1960 Edn.) the learned author observes (page 312) "It is suggested that a similar wide interpretation of the definition of "workmen" will be adopted by courts." In the United Kingdom, Association of variety artistes and Musicians have been

recognised as unions of workmen, and the old distinction of the restrictive meaning no longer holds the field.

(8) Apart from this, as far as the present judgment is concerned, the learned Judge appears to have overlooked the definition of "workman" in section 2 (g) of the Trade Unions Act itself in the form - "means all persons employed in trade or industry." The learned Advocate-General has placed certain arguments before us with regard to this definition, and the implication of the word "means", as occurring therein. We shall dilate upon this a little later. It is here pertinent to observe that this definition, if considered integrally with the definition of "Trade Union" in section 2 (h) renders otiose and even inadmissible any arguments founded upon the distinction between manual labour and brain-labour, in the context of the word "workmen". It is here important to take note of another judgment of the learned Judge (Ramachandra Iyer, J., himself) in ***Rangaswami* v. *Registrar of Trade Unions*** [AIR 1962 Mad. 231], a similar petition with regard to the order of the Registrar of Trade Union refusing to register the Union of Employees of the Madras Raj Bhawan, as a Trade Union under the Act. This judgment has really to be read as supplementing the judgment in appeal, with regard to the broad perspective of approach and the learned Judge herein specifically refers to the definition of "workmen" which occurs in section 2 (g). Upon these grounds, it is not essential to explore further the argument based upon the distinction as one of the factors justifying the order of the Registrar declining to register the appellant Union.

(9) Next, it is argued by learned counsel for the appellant Union, that as noted by the learned Judge himself, such Unions of civil servants of the State are recognised as Trade Unions in the United Kingdom. It is stressed that this recognition should also become part of the Industrial law of this country; particularly as Trade Unions of the workmen in the railways, which are now State concerns, already exist. There is no doubt about the situation in the United Kingdom, and a single sentence from a passage in the "***History of Trade Unions***" by Sydney and Beatrice Webb (1950 Edn., p. 507) cited by the learned Judge himself, will suffice.

> Practically no one below the rank of an Under Secretary of State is held to be outside the scope of the Society of Civil servants.

It is strenuously contended that the same principle should apply here, that any distinction between tenure at the pleasure of the Crown, in the United Kingdom, and tenure subject to constitutional safeguards, as in this Country, is really invalid for the purpose of applying the criterion under the Trade Unions Act, and that, in brief, the learned Judge was in error in holding that the appellant Union was not entitled to registration. Sri Ramachandran further contends that recent case-law has been in the opposite direction, namely, the direction of recognising even Governmental activities as part of "industry", and the employees of such branches of administration as "workers" entitled to form Trade Unions, subject of course, to well-recognised exceptions) section 2(s) of Act XIV of 1947), categories (i) to (iv); the cases relied on, chiefly are ***State of Bombay* v. *Hospital Mazdoor Sabha*** [AIR 1960 SC 610], ***Banerji* v. *Mukherjee*** [AIR 1953 SC 58] and ***Nagpur Corporation* v. *Its Employees*** [AIR 1960 SC 675]. These arguments certainly deserve careful consideration at our hands.

(10) We think it is clear that there are two broad grounds upon which the claim of the appellant Union to registration as a Trade Union could be properly resisted. The first ground is inherent to the very constitution of the Union, and the admitted facts of its structure, in relation to a basic principle stressed by the Supreme Court; we do not see how this ground of objection can in any manner be negatived. The second ground is more open to controversy, but even here we are inclined to the view that at least as relative to the core of the civil services entrusted with the implementation of the essential and sovereign functions of Government, the ground of objection is valid. But the first ground alone is really sufficient to dispose of the present appeal.

(11) As the learned Advocate-General contends, the word "means" when it occurs in a definition, and occurs without the complementary expression "and includes", is restrictive and explanatory in character. The matter was put thus by Lord-Esher M. R. in ***Gough* v. *Gough***, 1891-3 QB 665, at p. 674:

> It is a hard and fast definition, and the result is that you cannot give any other meaning to the word landlord in the Act than that which is mentioned in the definition.

Also see Burrows – ***Words and Phrases***, Vol. 3, page 347, and page 49 of Supplement, where Canadian case-law on the matter is cited. Hence, the word "workmen" as occurring in the Trade Unions Act, means "all persons employed in Trade or industry" without any other criterion or reference. The question therefore is whether such persons as Sub Magistrate in the Judiciary, Tahsildars, Officers of the Treasuries and Home department of Government, who are all members of the appellant-Union according to its constitution, could, by any stretch of imagination, be regarded as "workmen employed" in "trade" or "industry". Learned Counsel for the appellant Union (Sri Ramachandran) draws our attention to the observation of Lord Wright in ***National Association of Local Govt. Officers* v. *Bolton Corporation*** [1943 AC 166], to the effect that:

> Indeed Trade is not only in etymological or dictionary sense, but in the legal usage, a term of the widest scope.

He points out that in (AIR 1960 SC 610), a hospital subsidised and run by Government was held to be "industry" within the scope of the wide definition of section 2 (j) of the Industrial Disputes Act. But this very case furnishes us with a point of departure in the direction of excluding the core of the civil services from the definition of "workmen".

However wide the term "trade" might be, in all the authorities cited before us, the Supreme Court has approved of the dictum that those activities of the Government which should be properly described as regal or sovereign activities were outside the scope of "industry",

"These are functions which a constitutional Government can and must undertake for governance, and which no private citizen can undertake" (AIR 1960 SC 610 at p. 615). Their Lordships also quoted the reference of Lord Watson in ***Coomber* v. *Justices of Berks***, [(1883) 9 AC 61] to "the primary and inalienable functions of a Constitutional Government." Again, the dicta of Issacs, J., in ***Federated State School Teachers' Association of Australia* v. *State***

***of Victoria*,** [(1929) 41 CLR 569], were quoted with approval by the Supreme Court in AIR 1960 SC 675, namely,

> Regal functions are inescapable, and inalienable. Such are the legislative power, the administration of laws, the exercise of the judicial power.

The Supreme Court added –

> It could not have been, therefore, in the contemplation of the Legislature to bring in the regal functions of the State within the definition of "industry" and thus confer jurisdiction on industrial courts to decide disputes in respect thereof.

Also see the observations of this Court in ***Govindarajulu Naidu* v.** ***Secy. of State*** [AIR 1927 Mad 689], repelling an argument based on the wording in clause 12 of the Letters Patent, that the business of Government being to govern, Government must also be deemed, within the meaning of the section, to carry on business at its head-quarters. This court observed :

> The business intended by the section is a commercial business and not a business of State or Government.

(12) But if this criterion is to be applied, it is evident that the very basis of the structure of the appellant Union would exclude its registration as a Trade Union. The appellant Union purports to include among its members Sub Magistrates of the Judiciary, Tahsildars entrusted with the powers of enforcement of the tax-machinery (Revenue Recovery Act etc.), officers in charge of Treasuries and Sub-treasuries officers of civil court establishment, and of the Home Department of Government. It is impossible to contend that these are not civil servants engaged in the tasks of the sovereign and regal aspects of Government, which are its inalienable functions; they cannot be included within the definition of "workmen" in an "industry" to whom either section 2 (g) or 2 (h) of the Trade Unions Act can apply. Learned counsel points out that the Association equally includes members of the State Transport organisation, the Cinchona factory of Government, etc., who could well be regarded as person in an "industry" since these are specific industrial undertakings of Government, certainly not part of its essential and regal functions. This may well be so. As the learned Advocate-General has conceded, there are three categories to be regarded here, the middle of which shares the characteristics of the other two, and is hence debatable in its scope.

Firstly, we have the core of the civil services integrated with the inalienable and regal functions of government; those aspects of governmental activities cannot be an "industry"; not can such civil servants be "workmen". As opposed to this, we have those independent corporations which are quasi-Government agencies, or subsidised undertakings, which are purely industrial in character; these may be such concerns as a Machine Tool factory, Insurance Corporation etc. Here there would appear to be little room for doubt, upon the authority of (AIR 1960 SC 610), that these are industrial undertakings, whose employees are "workmen" at least as defined in the Industrial Disputes Act XIV of 1947. The learned Judge considers that the Trade Unions Act is not in *pari materia* but however this might be, it may be difficult in principle to claim that such employees could not raise "industrial disputes" or form Trade Unions for the conduct of such disputes. But we have the intermediate category, forming as the learned Advocate general phrased it, a kind of penumbra where light and shadow are mixed. Here, differences of view are certainly possible. Certain welfare,

educational or ameliorative departments of Government might or might not be regarded as liable to exclusion; the employees in those departments might or might not hence be regarded as "workmen" in an "industry". But we have no doubt that the appellant Union, with its wide and unqualified basis cannot claim to consist of "workmen" in an "industry". Sri Ramachandran argues that as the learned Judge himself has explicitly stated in a portion of his judgment "The test for a Trade Union is its object, and not its personnel. But that does not imply that persons who are not workmen" in an ""industry" can form a Trade Union at all; obviously they cannot, for the definitions in sections 2 (g) and 2 (h) could not apply to them, and they could neither raise a "trade dispute" nor form a "trade union". It is noteworthy that, as we have pointed out-siders can come into the picture only after the registration of the Trade Union. On this clear ground, the appellant Union must fail.

(13) Even upon the second ground, we consider that the appellant Union is not entitled to succeed, at least with reference to the members of the civil services who form part of the essential and regal administrative machinery of Government. Under Article 310 of the Constitution even in this country, the tenure of office of a civil servant is during the pleasure of the Head of the Union or the State, as the case may be, and Article 311 provides for statutory safeguards against certain penalties, such as dismissal removal or reduction in rank. To such a relationship, the concept of "collective bargaining" is utterly inappropriate and foreign. "Collective bargaining" is a right conceded to Labour Organisations within the contractual field of the employer and employee relationship. It would become a grotesque anomaly that if civil services, for instance, were permitted to raise a 'trade dispute" with regard to the dismissal of a civil servant it may be for activities against the State itself, and at the same breath to claim that the constitutional safeguards under Article 311, which are wholly irrelevant to the field of contract and to the employer-labour nexus, should be maintained intact for the benefit of the civil services. Hence, whatever might be the developments in the United Kingdom, it is difficult for us to conceive of "collective bargaining" as governing the State in its relations to civil services. It is not necessary for us to express any view whether, in the event of the employee of those branches of Government, which do partake of the character of "industry" organising themselves into an Association of this kind, they would be eligible for registration as a trade Union, or otherwise.

(14) We are therefore of the view, on a careful consideration of the grounds urged before us, that the order of the learned Judge (Ramachandra Iyer, J.,) was correct, and that this appeal has to fail. We accordingly direct that it be dismissed but, under the circumstances, without costs.

* * * * *

Registrar of Trade Unions **v.** *Government Press Employees Union*

(1976) Lab. I.C. 280 (Mad.)

MAHARAJAN, J. – 2. The Employees of the Pondicherry Government Press constituted themselves into the Government Press Employees Union and under Section 5 of the Trade Unions Act, applied to the Registrar of Trade Unions, Pondicherry for registration of the trade union. The Commissioner of Labour, Pondicherry, who happens to be also the Registrar of Trade Unions, sent a communication to the Secretary of the Government Press Employees Union on 1.7.1971 regarding his inability to register the trade union under the Trade Unions Act, 1926. The ground given by the Registrar for refusing to register the application was "the present functions of the Government Press Pondicherry do not come within the meaning of trade or business." Aggrieved by this order, the Secretary of the Government Press Employees Trade Union filed an appeal with the District Judge, Pondicherry in C.M.A. 45 of 1971, impugning the order of the Registrar. It was argued before the learned District Judge that the Government Press had been printing challans, gazettes and calendars, which were being sold to the public for a price and that the Government Press was also printing budget papers and papers for the various departments of the Government thereby rendering service either to the public or at least to a section of the public. This description of the functions of the Government Press, Pondicherry was not disputed by the counsel appearing for the Registrar of Trade Unions. But, it was contended on the basis of certain decisions that the employees in the Government Press being Government servants, were disentitled to form a trade union and therefore, their association was ineligible for registration under the Trade Unions Act. The learned District Judge, upon a consideration of the provisions of the Trade Unions Act, came to the conclusion, having regard to the nature of the activities of the Government Press, that it partook of the character of business and industry and that the workers employed in this industry were entitled to have their union registered under the Trade Unions Act, 1926. Consequently, the learned District Judge set aside the order of the Registrar of Trade Unions and allowed the appeal with costs. It is against this judgment that the Registrar of Trade Unions, Pondicherry has preferred this petition. The Trade Unions Act, 1926, as can be gathered from the preamble thereto, was intended to provide for the registration of trade unions and in certain respects, to define the law relating to registered trade unions. Under the Pondicherry Laws Regulation, 1963, this Act was extended to Pondicherry with effect from 1.10.1963

The question arises whether the workmen represented by the Government Press Employees Union, Pondicherry, are persons employed in trade or "industry." If they are so employed, there can be no difficulty in holding that their trade union shall be entitled to registration under the Trade Unions Act, 1926. It is contended on behalf of the appellant that the Government Press, Pondicherry cannot be legitimately regarded as indulging in trade because it is being conducted without any profit motive. It is true that when the Government Press prints budget papers and papers for the various departments of the Government, it does so without any profit motive. But, in view of the admission that the Government Press has also been printing challans, gazettes and calendars and has been selling the same to the public for a price, it is difficult to eliminate altogether the profit motive from this enterprise of the

Government. Even assuming that the Government Press is not a trading venture, the more important question that would arise is whether it is not an 'industry' within the meaning of clause (g) of Section 2 of the Act.

3. Learned counsel for the respondent would invoke the definition of the word 'industry' contained in clause (j) of Section 2 of the Industrial Disputes Act and ask me to give the same meaning to the word 'industry' used in clause (g) of S. 2 of the Trade Unions Act. The Trade Unions Act was passed in 1926 and I think it rather artificial and unrealistic to give to the word used in an Act of 1926 the extremely wide ranging meaning, which Parliament has chosen to assign to the word 'industry' in the Industrial Disputes Act, which was passed 21 years later in 1947. No doubt, in Section 2(j) of the Industrial Disputes Act, 'industry' has been defined to mean: 'any business, trade, undertaking, manufacture, or calling of employees and includes any calling, service, employment, handicraft, or industrial occupation and avocation of workmen.' But then, this sweeping definition does not seem to me in accordance with the Dictionary meaning of the word 'Industry.' This is a definition which it was open to Parliament to adopt for the specific purposes of the Industrial Disputes Act. I think it, therefore, wrong to interpret the word 'industry' used in the Act of 1926 in the light of the widely extended meaning given to it by a statute of 1947. What, then does the word 'industry' under the Act of 1926 connote? According to the Concise Oxford Dictionary, 'industry' means - (1) diligence, (2) habitual employment in useful works; (3) branch of trade or 'manufacture'. 'Manufacture' according to the same dictionary means 'making of articles by physical labour or machinery especially on large scales; branch of such industry as woolen, etc." It would be clear from this dictionary meaning of the words 'industry' and 'manufacture' that no profit motive is necessarily involved in an industry. There can be little doubt that the Government Press has been manufacturing with the aid of the printing press, as well as by physical labour, and on a large scale, such articles as challans, gazettes and calendars, budget papers, etc. It would, therefore, undoubtedly be an 'industry' within the meaning of the Trade Union Act and the respondents, being persons employed in such an industry must be rightly regarded as 'workmen' within the meaning of the Act. Any combination formed primarily for the purpose of regulating the relations between these workmen and their employers would, then be a trade union within the meaning of clause (h) of Section 2 of the Act.

Learned counsel for the appellant would, however, contend that the workmen in the employ of the Government Press, Pondicherry, being Government servants, their trade union is disentitled to registration under the Trade Unions Act. I have scrutinized, in vain, the various provisions of the Act to discover whether workmen employed under the Government have been expressly or by necessary implication, put out of the pale of the Trade Unions Act. We are familiar with a number of special enactments which make it clear that they would have no application to Government concerns. No such provision has been made in the Trade Unions Act. On the contrary, an amendment made by Parliament in 1947 would serve to emphasise the legislative intention to bring even an industry run by the Government within the ambit of the Trade Unions Act, 1926. I refer to Central Act 45 of 1947 called the Indian Trade Unions Amendment Act, 1947, which received the assent of the Governor-General on 20.12.1947. In Section 3, clause (b), sub-clause (b) of the Amending Act, the word

'employer' has been defined to mean – 'in relation to the industry carried on by or under the authority of any department of the Central Government or a Provincial Government the authority prescribed in this behalf or where no authority is prescribed the head of the Department." This amendment reflects the undoubted intention of Parliament to bring an industry carried on by or under the authority of the Central Government or Provincial Government within the province of the Trade Unions Act, 1926. Learned counsel for the appellant contends that the amendment Act of 1947 would come into force only on such date as the Central Government may by notification in the official Gazette appoint and inasmuch as the Central Government has not since 1947 made any notification in this behalf, the Court ought not to have any regard for the provisions contained in the amendment Act while construing the Trade Unions Act, 1926. I am unable to agree. It may be that several new provisions contained in the Amending Act would not have come into force because the Central Government has not chosen to appoint a date by notification. But the Court cannot close its eyes to the fact that Parliament has expressed unambiguously, its intention by enacting Act 45 of 1947 and making it clear in its definition of 'employer' that even an industry run by the Government is subject to the provisions of the Trade Unions Act. As I have already pointed out, even without invoking Act 45 of 1947, the only reasonable construction to put upon the several provisions of the Trade Unions Act 1926 is that all workmen employed in any trade or industry, regardless of the fact whether the trade or industry is being conducted by a Government or by a private agency, are entitled to combine themselves into a trade union and to get their trade union registered under Section 6 of the Act. This conclusion, which can be independently arrived at, is reinforced by the amending Act of 1947.

5. Learned counsel for the respondents placed strong reliance upon a Division Bench ruling of the Calcutta High Court in ***Registrar of Trade Unions, West Bentgal*** **v.** ***Mihir Kumar Gooha*** [AIR 1963 Cal. 56]. That was a case where the employees of the State Insurance Corporation resolved to form a trade union of their own and the Registrar of Trade Unions rejected their application for registration under the Indian Trade Unions Act, 1926. The matter came up before the Calcutta High Court and the Division Bench held that the Employees' State Insurance Corporation carried on a 'trade' or 'industry' and the employees thereof were 'workmen' as defined in clause (g) of Sec. 2 of the said Act. In support of this proposition, the learned Judges gave their reasons as follows, at page 58:

> It will be observed that in the definition of the expression 'trade dispute,' the words 'trade' and 'industry' occur. 'Workmen' according to this definition, mean all persons employed in a trade or industry. In the definition of the expression 'trade union,' the words 'trade' and 'business' appear. It follows that there may be 'trade union' within the meaning of the said Act, not only in connection with a 'trade' or 'industry' but also with a 'business.'

5-A. Again, their Lordships have observed at page 59 as follows:

> It is obvious that the words 'trade,' 'industry,' and 'business' have been used indiscriminately and are all within the scope of the Act, which was intended to be wide in scope. The argument put forward on behalf of the respondent is that the

expression 'workmen' in Section 2(g) relates to 'trade' or 'industry' whereas the Employees' State Insurance Corporation is neither a 'trade' or 'industry'....

6. I am afraid, with great respect to the learned Judges, it is not permissible to invoke the subordinate clause in the definition of 'trade union' and use the phrase 'trade or business' employed in that subordinate clause for the purpose of expanding the meaning of 'workmen' defined in clause (g) of Section 2. The word 'business' employed in clause (h) of Section 2 has to be understood in a restricted sense with reference to the company of words in which it occurs. As the Division Bench of our High Court has pointed out, if the extended meaning given by the Calcutta High Court were to be adopted, even Government servants exercising sovereign and regal functions like Sub-Magistrates, would have to be regarded as 'workmen' falling within the mischief of the Trade Unions Act, in which case, it would militate against the ruling of the Supreme Court that it could not have been in the contemplation of the Legislature to bring in regal functions of the State within the definition of 'industry' and thus confer jurisdiction on Industrial Courts to decide disputes in respect thereof. Therefore, I refuse to adopt the extended meaning given by the Calcutta High Court. I am clear in my mind that the workmen employed in an Industrial undertaking like the Government Press, Pondicherry, are 'workmen' entitled to the benefits of Trade Unions Act of 1926. Consequently, I confirm the judgment of the Court below and dismiss this petition with costs.

* * * * *

Tirumala Tirupati Devasthanam **v.** *Commr. of Labour*

(1995) Supp (3) SCC 653

P.B. SAWANT AND YOGESHWAR DAYAL, JJ. 1. The facts in this appeal are that the employees working in Power and Water Works Wings of the appellant-Devasthanam had applied for registration of their association under the Trade Unions Act, 1926 (the "Act") which application was allowed. However, the appellant-Devasthanam thereafter made an application under Section 10 of the Act for cancellation of the registration of the said Union. The Registrar rejected the application. In appeal, the High Court went into the question as to whether the two wings, viz., the Water and Power Wings of the appellant-Devasthanam were an 'industry' and came to the conclusion that they were an 'industry', and therefore, held that the certificate granted to the Union was not liable to be cancelled. Aggrieved by the decision of the High Court, the appellant has come in appeal before us.

2. We are unable to understand the ground on which the appellant applied to the Registrar of the Trade Unions for cancellation of its certificate of registration. No ground mentioned in Section 10 of the Act was available to the appellant for making such application. As far as the ground mentioned in sub-section (*a*) of the said section is concerned, it is only the Trade Union which can approach the Registrar on the said ground for the cancellation of its certificate. As regards sub-section (*b*) of the section, there is nothing in the application which would show that any of the grounds mentioned therein exists.

3. Mr Subba Rao, learned counsel appearing for the appellants, contended that since according to the appellant the Water and Power Wings of the appellant were not an industry, no union of the employees working in them could have been registered as a Trade Union under the Act. We do not find that the Act imposes any such condition for registration of a trade union. Section 2(*h*) of the Act defines "trade union" as follows:

> 'Trade Union' means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions.

4. It would be apparent from this definition that any group of employees which comes together primarily for the purpose of regulating the relations between them and their employer or between them and other workmen may be registered as a trade union under the Act. It cannot be disputed that the relationship between the appellant and the workmen in question is that of employer and employee. The registration of the association of the said workmen as a trade union under the Act has nothing to do with whether the said wings of the appellant are an industry or not. We are, therefore, of the view that the High Court went into the said issue, although the same had not arisen before it. Since the findings recorded by the High Court on the said issue, are not germane to the question that falls for consideration before us, we express no opinion on the same and leave the question open.

5. In the view we have taken, the workmen concerned are entitled to get their association registered under the Act. We dismiss the appeal subject, of course, to the observation that we

express no opinion on the findings recorded by the High Court that the wings in question are an industry and keep the question open.

[1. Pursuant to the High Court's decision in W.P. No. 840 of 1976 and 1866 of 1986, the Power and Water Wings of the appellant Devasthanam were held to be an industry in these proceedings as well as the High Court dismissed the present Writ Petition No. 6622 of 1982 and the Writ Appeal No. 1230 of 1989 before it. We have today dismissed Civil Appeal No. 2255 of 1977 holding that the workmen engaged in the said two wings were entitled to get their Union registered under the Trade Unions Act, 1926 irrespective of whether the said wings were an industry or not. The question whether the wings in question were an industry or not did not fall for consideration there while deciding whether the appellant could apply for the cancellation of the Union registered under the Act. We have, therefore, held that the findings recorded on the said issue by the High Court in the said Writ Petitions Nos. 840 of 1976 and 1866 of 1986 were uncalled for. We have also kept the said question open.

2. The High Court in the present case has upheld the reference of the industrial dispute made by the State Government on the ground that it had held the said two wings to be an industry in the said earlier writ petitions. Admittedly, the finding in question was given by the High Court for the purposes of upholding the validity of the registration of the Union under the Trade Unions Act. We have pointed out; while dismissing the appeals against the decision in the said writ petitions that the question did not arise even for the limited purpose under that Act. The finding given under that Act and for the purpose in question which did not warrant it, cannot, therefore, be relied upon for disposing of the present writ petition. We, therefore, set aside the decision both of the learned Single Judge and the Division Bench of the High Court and remand the matter to the learned Single Judge for deciding the question as to whether the two wings in question are an industry within the meaning of the Industrial Disputes Act, 1947 for the purposes of examining the validity of the reference made. The appeal is allowed accordingly with no order as to costs.

Tirumala Tirupati Devasthanam **v.** ***Govt. of A.P.*** **,**1995 Supp (3) SCC 654]

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[*On the question of recognition and de-recognition of a registered union, see* ***S.A. Ssawant*** **v.** ***State of Maharashtra****,* AIR 1986 SC 617 *and* ***Delhi Police Non-Gazetted Karamchari Sangh*** **v.** ***Union of India****,* AIR 1986 SC 379.]

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In Re Inland Steam Navigation Workers' Union

AIR 1936 Cal. 59

C.J. DERBYSHIRE, J. – This matter comes to us by way of appeal from the Registrar of Trade Unions for Bengal. The appeal is brought under S. 11, Trade Unions Act of 1926.

In the petition which brings the matter before us it is stated that on 8th March 1935 a meeting of the employees of all Inland Steamer Services in the Province of Bengal was held at Jorabagan Park in the town of Calcutta and the employees assembled resolved to form a Union in the name of "Inland Steam Navigation Workers' Union" and the said Union was formed on the date. It is also stated in para 2 that the rules of the said "Inland Steam Navigation Workers' Union" were so framed as to enable all employees of all Inland Steamer Services in India to become members of the said Union and the subscription was fixed on a monthly basis. Para 3 states that thereafter, on the 26th March 1935, an application was filed before the Registrar of Trade Unions for registration of the said Union under the provisions of the Indian Trade Unions Act, 1926. Para 4 states that thereupon, on the 16th May 1935, the Registrar refused to register the Union and passed the following order:

> The application below purports to be an application for registration under the Indian Trade Unions Act, 1926, on behalf of a Union calling itself the Inland Steam Navigation Workers' Union. A few days before this application was filed, the General Secretary of this Union addressed the Government of Bengal in a letter dated 22nd March 1935 and stated that he had been directed by the general body of the Inland Steam Navigation Workers' Union, formerly known as R.S.N. and I.G.N. and Ry. Workers' Union, to approach Government and request that the notification under S. 16, Criminal Law Amendment Act, 1908, declaring the R.S.N. and Ry. Workers' Union an unlawful association might be withdrawn. The rules and the constitution of the so-called Inland Steam Navigation Workers' Union are for practical purpose identical with those of the banned Union: the principal officers are common to both and in view of the declaration in the Union's letter of 22nd March 1935 that this Union was formerly known as R.S.N. and L.G.N. and Ry. Workers' Union, I have no hesitation in finding that the present application is an attempt to have the Union which was registered on 18th September 1934 and No. 62 and thereafter declared an unlawful association registered under a new name. The application is accordingly refused.

The letter that is referred to by the Registrar is headed Inland Steam Navigation Workers' Union, Head Office, 209, Cornwallis Street, Calcutta, dated 22nd March 1935, addressed to Sir John Woodhead, Esq., Chief Secretary to the Government of Bengal,

> Respected Sir,
>
> *Unlawful bodies.*
>
> I have been directed by the general body of the Inland Steam Navigation Workers' Union to approach your good self with the following few lines for your kind information and necessary order:

That the R.S.N. and I.G.N. and Ry. Workers' Union was organised by me in September last 1934.

That within a short period it had enrolled about 6,000 members and the majority of them are clerks.

That 98 percent members of the Executive Committee including the president belonged to the active service of industry.

That myself was the General Secretary and Mr. S.N. Banerji was one of the Vice-Presidents of the Union who had no connection with any Communist Party in India or abroad.

That except myself, Banerji and few members of the Union were ever allowed to deliver speeches in the meeting of the said Union.

That the so-called communist had no hands or any connection with this particular Union.

That this Union had no connection with Communist International nor its object preached or methods adopted.

That this Union had no touch with the peasants' movement.

That this Union had never received any financial help from outside nor from any other party in India.

That this Union approached on several occasions the Government Officials and Labour Commissioner to secure redress of the steamer employees.

That this Union submitted an application for a Board of Conciliation: vide Trade Disputes Act of 1929.

That this Union never carried out any programme of mass revolution nor advocated militant communist methods.

That on the 10th March last in the protest meeting neither myself nor Mr. Banerji made any sort of violent speeches which might be in the record of the Police Report.

That Mr. Celson, Commissioner of Police, is personally known to me for the last eight years who can speak well of me.

Under the circumstances, when the Government of India have expressed their desire to lift the ban on genuine Trade Unions, should we not get its advantage?

A favourable decision will highly oblige.

I have the honour to be,

Sir, (Sd.) K.C. Mitra

Thereafter, the present appellant endeavoured to open the matter with the Registrar of Trade Unions with a view to secure registration of this Trade Union amplifying the letter that I have read with arguments to show that the appellants were and are Trade Unions different from the one declared to be unlawful by the Government. These arguments were not successful as on 24th May the Registrar of Trade Unions, Bengal, wrote back that he was not prepared to revise the orders that he had made in his letter of 16th May. From that order the appellants have appealed under the provisions of the Act above cited to this Court. This is the

first appeal of its kind which has come before this Court. We are in doubt as to whether the matter ought to be dealt with by a single Judge on the original side or by two Judges sitting here in what is ordinarily called an appellate Court. We directed the matter to come before us. It may be that in future such appeals from the Registrar of Trade Unions in matters of this kind will be directed to be taken by a single Judge sitting alone so that if it should be necessary, evidence can be taken. Now the first thing that strikes me is that the Registrar relied on a letter which was written by the Secretary of the appellant Union to Sir John Woodhead as showing that this Union was, for all practical purposes, the same as the I.G.N. Union which had been declared to be unlawful under S. 16, Criminal Law Amendment Act. He appears to have acted on that letter without giving the appellant any notice of it or without giving them any opportunity of dealing with the statements therein set out.

In my view, if the Registrar was going to rely upon that letter he ought to have brought it to the notice of the appellants before he acted on it and given them an opportunity to say anything that they had to say with regard to it. It is quite true that after he had given the decision the matter was raised again and the appellants were given an opportunity of saying what they had to say. But that is not enough. Such opportunity ought, in my view, to have been given before the Registrar considered that letter – if indeed he ought to have considered that letter at all. The office of the Registrar of Trade Unions is one created by the Statute of 1926 and the functions which the Registrar has to perform are prescribed by that Act. By that Statute, in S. 2(h), Trade Union is defined, and it is defined to be any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more Trade Unions. Then there is a proviso which does not come in in this case at all. S. 4 of the Act provides for mode of registration; S. 5 deals with application for registration; S. 6 prescribes provisions to be contained in the rules of a Trade Union; S. 7 empowers the Registrar to call for further particulars and to require alteration of name; S. 8 provides that the Registrar on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register, to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration. S. 9 prescribes the form of the certificate of registration; S. 10 deals with cancellation of registration. S. 15 sets out all the objects on which the general funds of the Union may be spent. S. 16 deals with the constitution of a separate fund for political purposes. S. 17 deals with criminal conspiracy in trade disputes. S. 18 deals with legal proceedings and other suits in certain cases. S. 22 prescribes the proportion of officers to be connected with the industry. S. 23 deals with the change of name of the Trade Union. S. 24 deals with amalgamation of Trade Unions; S. 27 deals with the dissolution of Trade Unions. S. 28 deals with the returns to be made by Trade Unions, S. 29 gives the Local Government, subject to the control of the Governor-General-in-Council, powers to make regulations for the purpose of carrying into effect the provisions of the Act. Under S. 29 in the Province of Bengal regulations have been made which are called Trade Union Regulations of 1927. They make provisions for various ministerial acts and duties to be carried on in connection with the registration and the carrying on and rendering of accounts and returns of Trade Unions.

Now it has been said on behalf of the Registrar that he was quite right in refusing to register this Union. It is said that he came to the conclusion on the facts before him that this Union was really the I.G.N. Union under a different name. The I.G.N. Union had been declared to be an unlawful Association. Therefore he was justified in refusing to register this Union. IN my view, the Registrar in taking up that attitude is wrong. The functions of the Registrar are laid down in S. 8.

The Registrar on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration shall register the Trade Union….

Then the prescribed form is set out. The new Union may or may not be a continuation of the other Union or its successor. Whether the new Union is or is not the same as, or successor to the old Union, depends on evidence. Until further evidence is forthcoming in my view it is impossible to say whether the new Union is or not the same as the old Union or the successor to the old Union. In my view, the duties of the Registrar were to examine the application and to look at the objects for which the Union was formed. If those objects were objects set out in the Act, and if those objects did not go outside the objects prescribed in the Act and if all the requirements of the Act, and the regulations made thereunder had been complied with it was his duty, in my view, to register the Union. If at sometime that Union is deemed by those who have the power to deal with the matter to be an unlawful association within S. 16, Criminal Law Amendment Act this Union can be proscribed as an unlawful association in the same way as any other body. But in my view the Registrar is not, at this stage, entitled to go into that question; his functions in my view are limited to seeing that the requirements of the Act have been complied with. We have not before us the necessary particulars to decide whether this Trade Union should be registered, and I am of opinion that this appeal should be allowed and the matter should be sent back to the Registrar for him to consider the question as to whether the requirements of the Act, and the regulations made thereunder, with regard to registration, have been complied with, or not. If, on the face of the application, the objects and the provisions for carrying them out are within what is allowed by the Act and the requirements as to registration have been complied with, he should register; if not, he should decline to register. We think, in the circumstances, there should be no order as to costs on either side.

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R.S. Ruikar **v.** *Emperor*

AIR 1935 Nag. 149

J.C. GRILLE, J. – This is an application in revision by R.S. Ruikar who has been convicted of the abetment of the offence of molestation defined in S. 7, Criminal Law Administration Act (23 of 1932). He was sentenced to six months' rigorous imprisonment, and the sentence was upheld on appeal. The facts found are as follows: The Nagpur Textile Union of which the applicant is the President had determined on a strike of textile workers in Nagpur, the ground being that certain conditions in the terms of settlement of a strike in the previous year 1933 had been evaded by the Empress Mills in Nagpur. The strike was ordered, but did not at first meet with the response which the union desired and consequently a system of picketing was inaugurated. On 3rd, 4th and 6th May 1934 the applicant made speeches supporting the strike and in the course of his speeches advocated and encouraged the picketing of the mills and called for volunteers to carry on the picketing. On the morning of 5th May as a result of a complaint made by some of the strike committee that two women picketers had been harassed by the police and driven away, the applicant brought his wife to one of the mill gates and posted her there with instructions to beat, with her slippers, any one who interfered with her. Charges were framed under four heads, three relating to the speeches delivered on 3rd, 4th and 6th May 1934 and the fourth relating to the incident of the abetment of picketing by his wife on 5th May. Proceedings were taken against the applicant on 7th May under S. 107, Criminal P.C., and it is admitted that after that there were no further activities on his part. He was not however arrested for the offences of which he has been charged and of which he has been convicted until the 16th May. The proceedings under S. 107, Criminal P.C., are in abeyance.

The principal contention on behalf of the applicant is that on the facts found against him in trial and in appeal no offence has been committed as S. 7, Criminal Law Amendment Act (23 of 1932) can have no application to purely industrial disputes.

In order to support the view that S. 7, Criminal Law Amendment Act, has no reference to picketing in the course of trade disputes, I am asked to refer to the statement of objects and reasons accompanying the Criminal Law Amendment Act on its introduction, and the decision in ***Shantanand Gir* v. *Basudevanand Gir*** [AIR 1930 All 225] has been cited as authority for the proposition that such reference is permissible, and old cases from the C.P. Law Reports have been cited to show that Judges have made references to Statement of Objects and Reasons in the past for the purpose of interpreting the law. The only other case cited by the applicant is ***Administrator General of Bengal* v. *Premlal Mullick*** [AIR 1922 Cal 788] and it is contended that their Lordships of the Privy Council, when holding that proceedings of the legislature in passing a statute are excluded from consideration on the judicial construction of Indian statutes, thereby implied that a reference to the Statement of Objects and Reasons is permissible. I am unable to read any such implication in the judgment of their Lordships. The latest C.P. case cited was ***Balaji* v. *Govinda*** [(1888) CPLR 111] and in that, as in the previous cases, there was doubt as to the exact meaning or intention of a particular section. In ***Shantanand Gir* v. *Basudevanand Gir*** which the applicant cites, the Judges of the High Court of Allahabad were equally divided on the question whether it was

permissible to refer to the Statement of Objects and Reasons appended to an Act as introduced and published and the three learned Judges who held that such a reference was permissible qualified their observations by the limitation that such a reference could be made when there was an ambiguity. As the wording of the section under consideration is entirely plain and unambiguous, it seems to me unprofitable and unnecessary to enter into a discussion of the question whether such a reference is permissible at all. The section itself makes no limitation in respect of the parties disputing or the nature of the disputes giving rise to a situation where picketing is employed, and from the wording of the section itself I am unable to see that its application is anything but universal.

It is next contended that a perusal of the Act as a whole without any reference to the Statement of Objects and Reasons would indicate that S. 7, Criminal Law Amendment Act is to be utilised only on occasions of combating undertakings which are subversive to the Government. Now it is true that the bulk of the sections in the Criminal Law Amendment Act (23 of 1932) do refer to activities subversive to Government and that the Act is a consolidation of some ordinance which had been issued from time to time and which the legislature considered necessary to embody as part of the law, but that in itself does not show that S. 7 cannot be of universal application. There are other sections which are equally of universal application. I cite S. 10 of the Act which gives the Local Government power to declare offences committed under certain sections non-bailable and cognizable despite the provisions of the Criminal Procedure Code. The Local Government may publish the requisite notification required by this section at any time when it considers that such proclamation is necessary in the interests of law and order, but once such a notification has been issued the section would become operative in law whether the offences falling under these sections were committed with a subversive object or not. The same criterion would apply to S. 7 of the Act, the effectiveness of which depends on the publication of the notification by the Government that the section shall come into force. The requisite notification was published in August 1933.

It is urged that at the time the Criminal Law Amendment Act was passed by the Central Legislature, assurances were given that S. 7 would not be employed in the case of industrial disputes. In interpreting the section this Court is precluded from considering any statements made in the Legislative Assembly or elsewhere on behalf of Government. It is no duty of the Courts of law to examine, criticise or interpret anything that may be said on behalf of Government in debate or elsewhere, and it is beyond the competence of this Court to examine the correctness of the applicant's assertions. The duty of the Court is to interpret the law as enacted. Had it been the intention of the legislature to exclude the application of S. 7 from cases arising out of industrial disputes, it would have said so in explicit terms, more particularly in view of the nature of the majority of the other sections of the Act which have their origin in other ordinances. It is next argued that the ordinance out of which S. 7 arose was enacted with the particular purpose of combating the Civil Disobedience Movement. It is no doubt true that this was the occasion, but neither the ordinance nor the present Act lays down any limitation as to the circumstances in which molestation becomes an offence. At the time of the Civil Disobedience Movement of 1930 certain persons discovered a gap in the Indian Penal Code whereby they were enabled to commit acts of intimidation which were not punishable by law. Proceedings taken to remedy this deficiency were not directed personally

against such persons who were influenced by motives hostile to Government, but remedied the defect in law which left open the way for any person who so chose to bring unwarranted pressure on another person whatever his motive might be. The absence of any provision preventing molestation was recognised as a definite lacuna in the Criminal law and an enactment was made to remedy it. That the defect was discovered by the ingenuity of persons taking part in the Civil Disobedience Movement does not limit the universal applicability of the remedy, and I am unable to read, as the applicant desires me to read the opening word of the section "whoever" as "whoever" may be disaffected towards the Government.

The next contention is that there is a definite conflict between S. 7, Criminal Law Amendment Act and the Trade Unions Act of 1926. It is contended that the valuable right given to Trade Unions to declare a strike and their immunity from liability for criminal conspiracy or to civil suits in connection with the furtherance of a strike is taken away if S. 7, Criminal Law Amendment Act, is held to be applicable to trade disputes. I am unable to see any conflict. Trade Unions have the right to declare strike and to do certain acts in furtherance of trade disputes. They are not liable civilly for such acts or criminally for conspiracy in the furtherance of such acts as Trade Unions Act permits, but there is nothing in that Act which apart from immunity from criminal conspiracy allows immunity from any criminal offences. Indeed any agreement to commit an offence would, under S. 17, Trade Unions Act, make them liable for criminal conspiracy. S. 7, Criminal Law Amendment Act, is part of the Criminal law of the land and an offence committed as defined in that section is an offence to which the concluding sentence of S.17, Trade Unions Act, applies as much as it would do to an agreement to commit murder. The applicant has cited several passages from Maxwell on the Interpretation of Statutes which are all eminently acceptable propositions of law, but have no application to the case in hand. S. 7, Criminal Law Amendment Act defines a criminal offence of universal application without restriction and it must be interpreted according to its plain and obvious meaning, and as it defines a criminal offence it is not in conflict with the provisions of the Trade Unions Act, which remains unimpaired by S. 7, Criminal Law Amendment Act. In abetting the commission of this offence, an offence which was undoubtedly committed, the applicant has been correctly convicted.

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Rohtas Industries Staff Union **v.** *State of Bihar*

AIR 1963 Pat. 170

RAMASWAMI, C.J. – In Miscellaneous Judicial Case No. 498 of 1959, petitioner No. 1 is a registered trade union, called the Rohtas Industries Mazdoor Sangh. Petitioners Nos. 2 and 3 are employees of respondent No. 2, the Rohtas Industries Limited, which have many units of production at Dalmianagar, namely, cement, paper, sugar, etc. etc., and a large number of workers are employed therein. For disputes regarding non-payment of bonus and non-implementation of Shree Jee Jee Bhoy's award, there was a strike notice served by petitioner No. 1 on respondent No. 2. The strike was started in the factories of the Rohtas Industries Limited on the 3rd September, 1957, and it was called off on the 3rd October, 1957, on the basis of an agreement between the management and the workers dated the 2nd October, 1957.

By this agreement the parties agreed to refer certain matters in dispute to arbitration. Under Section 10-A of the Industrial Disputes Act the Government of Bihar published the arbitration agreement in the Bihar Gazette. The arbitration agreement is to the following effect:

"Agreement under Section 10-A of the Industrial Disputes Act, 1947, between Rohtas Industries Limited and its workmen.

Representing Employers – Rohtas Industries, Ltd., Dalmianagar.

Representing Workmen – (1) Rohtas Industries Mazdoor Sangh, Dalimianagar;
(2) Rohtas Industries Staff Union, Dalmianagar;
(3) Dalmianagar Staff Employees' Union, Dalmianagar.
(4) Dalmianagar Mazdoor Seva Sangh, Dalmianagar.

It is hereby agreed between the parties to refer the following industrial disputes to the arbitration of Shri J.N. Mazumdar, Ex. Judge, Calcutta High Court, and Ex. Chairman, Labour Appellate Tribunal of India, and Shri R.C. Mitter, Ex. Judge, Calcutta High Court and Ex. Chairman, Labour Appellate Tribunal of India:

(i) Specific matters in dispute – Issues arising out of paragraph 7 of the Agreement dated 2nd October, 1957, reproduced below:

> "The employees claim for wages and salaries for the period of strike and the Company's claim for compensation for losses due to strike shall be submitted for arbitration of Shri J.N. Mazumdar and Shri R.C. Mitter, Ex. High Court Judges and Ex. Members of the Labour Appellate Tribunal of India as Joint Arbitrators and their decisions on the two questions shall be final and binding on all the parties."

(ii) Details of the parties to the dispute – The Rohtas Industries Ltd., Dalmianagar and their workmen.

(iii) Name of the Unions representing the workmen – (1) Rohtas Industries Mazdoor Sangh, Dalmianagar, (2) Rohtas Industries Staff Union, Dalmianagar, (3) Dalmianagar Staff Employees' Union, Dalmianagar, and (4) Dalmianagar Mazdoor Seva Sangh, Dalmianagar.

(iv) Total number of workmen employed in Rohtas Industries Limited – About 5,500.

(v) Estimated number of workmen likely to be affected by the dispute – About 5,500."

According to clause 7 of the agreement, the claim of the workers for wages and salaries for the period of the strike and the claim of the Company for compensation for loss of production due to strike were to be submitted for arbitration of Shri J.N. Mazumdar and Sri R.C. Mitter, former High Court Judges and Ex. Members of the Labour Appellate Tribunal of India, as joint arbitrators. On the 20th April, 1959, the arbitrators gave an award and sent the same for publication to the Government of Bihar. In this award the arbitrators decided all the issues against the trade unions and held that compensation should be paid by the workers who had gone on strike to the Rohtas Industries Limited to the extent of Rs. 6,90,000/- and to the Ashoka Cement Works Limited to the extent of Rs. 80,000/-. The arbitrators also decided that the cost of arbitration should be divided equally between the employers and the trade unions concerned.

The petitioners have obtained a rule from the High Court asking the respondents to show cause why the award of the arbitrators dated the 20th April, 1959, should not be quashed by a writ in the nature of certiorari under Article 226 of the Constitution. Cause has been shown by the Additional solicitor General of India on behalf of respondent No. 2, to whom notice of the rule was ordered to be given. On behalf of respondent No. 1, the State of Bihar, the Additional Government Pleader, supported the contention of the petitioners that the award of the arbitrators is ultra vires and illegal in so far as it directs compensation to be paid by the workmen going on strike to the management of the company for loss of production and business due to the strike.

(2) In Miscellaneous Judicial Case No. 475 of 1959, petitioner No. 1 is a registered trade union, called the Rohtas Industries Staff Union, and respondents Nos. 2, 3, 3, 5 and 6 are the Rohtas Industries Limited, Ashoka Cement Limited, Sri Krishna Gyanoday Sugar Limited, Ashoka Marketing Limited and Bharat Collieries Limited. The material facts in this case are identical to those in Miscellaneous Judicial Case No. 498 of 1959, and the question of law presented for determination in this case is of the same character.

(3) It was submitted on behalf of the petitioners that compensation by the workmen to the employer has no direct connection with the employment or non-employment or the condition of employment of any workman and so does not come within the definition of Section 2(k) of the Industrial Disputes Act.

The opposite view point was presented by the Additional Solicitor General and it was contended that the definition of Section 2(k) of the Industrial Disputes Act was wide enough to cover the question of compensation to be paid to the employer by the workmen for the loss caused to business by the launching of the strike. Reference was made by the Additional Solicitor General to the decision of the Federal Court in ***Western India Automobiles Association*** **v.** ***Industrial Tribunal, Bombay*** [AIR 1949 FC 111], where it was held by the Federal Court that the question of reinstatement of a workman is covered by the definition of "industrial dispute" in Section 2(k) of the Industrial Disputes Act. I consider that there is

much force in the contention put forward on behalf of the petitioners that the question of compensation payable by the workmen to the employer for the loss caused by a strike does not come within the purview of Section 10-A of the Industrial Disputes Act, and such a claim of the employer cannot fall within the definition of "industrial dispute" under Section 2(k) of the statute.

It should be noticed that Section 25-C of Chapter VA provides for compensation to workmen who are laid-off. Section 25-FF similarly provides for compensation to workmen in case of transfer of understandings. Section 25-FFF in the same manner provides for compensation in case of closing down of undertakings. There is no similar provision in the Act for compensation payable to employers by workmen for interference with the business. It is true that the language of section 2(k) is wide, but it is a well established canon of construction that the language of any section must be interpreted in the setting and in the context of other sections of the Act. In other words, the meaning of the section must be subject to the qualifying effect of *subjectae materies*. I do not propose, however, to express any concluded opinion on this question in the present case. I shall proceed on the assumption that the claim of the employers for compensation from the workmen falls within the scope of Section 2(k) of the Industrial Disputes Act, and the reference to arbitration under Section 10-A of the Industrial Disputes Act of this question is *intra vires*.

(4) I shall now consider the main argument addressed on behalf of the petitioners that the award of the Arbitrators is illegal and ultra vires because they committed a mistake of law apparent on the face of the record. It was contended by learned counsel on behalf of the petitioners that the arbitrators were erroneous in holding that the workers had committed the tort of conspiracy and were accordingly liable for paying compensation to the Companies concerned. It was also submitted that the arbitrators had committed an error of law in holding that the workers were not protected by the immunity granted under Section 18 of the Trade Unions Act. It was submitted on behalf of the petitioners that the award of the arbitrators so far as the question of compensation is concerned is vitiated by error of law and must be quashed by grant of a writ in the nature of certiorari under Art. 226 of the Constitution.

(5) The law with regard to the tort of conspiracy is now well established. Conspiracy as a tort must arise from a combination of two or more persons to do an act. It would be actionable if the real purpose of the combination is the inflicting of damage on A, as distinguished from serving the bona fide and legitimate interests of those who so combine and there is a resulting damage to A. In the leading case of ***Sorrell* v. *Smith*** [1925 AC 700], Lord Cave, L.C. remarked as follows:

> I deduce as material for the decision of the present case two propositions of law which may be stated as follows: (1) A combination of two or more persons wilfully to injure a man in his trade is unlawful and, if it results in damage to him, is actionable, (2) If the real purpose of the combination is, not to injure another, but to forward or defend the trade of those who enter into it, then no wrong is committed and no action will lie, although damage to another ensues. The distinction between the two classes of case is sometimes expressed by saying that in cases of the former class there is not, while in cases of the latter class there is, just cause or excuse for the action taken.

In a subsequent case, ***Crofter Hand-woven, Harris Tweed Co.*** **v.** ***Veith*** [1942-1 All ER 142] the House of Lords applied the principle of the ***Mugul*** case [***Mogul S.S. Co.*** **v.** ***Mc Gregor Gov. and Co***., 1892 AC 25] to labour relations. It was observed by Viscount Simon, L.C. in this case as follows:

> (T)he predominant object of the respondents in getting the embargo imposed was to benefit their trade union members by preventing under-cutting and unregulated competition, and so helping to secure the economic stability of the island industry. The result they aimed at achieving was to create a better basis for collective bargaining, and thus directly to improve wage prospects. A combination with such an object is not unlawful, because the object is the legitimate promotion of the interests of the combiners…

In the course of his judgment in the same case, Lord Wright observed as follows:

> It cannot be merely that the appellants' right to freedom in conducting their trade has been interfered with. That right is not absolute or unconditional. It is only a particular aspect of the citizen's right to personal freedom, and, like other aspects of that right, is qualified by various legal limitations, either by statute or by common law. Such limitations are inevitable in organized societies, where the rights of individuals may clash. In commercial affairs, each trader's rights are qualified by the right of others to compete. Where the rights of labour are concerned, the rights of the employer are conditioned by the right of the men to give or withhold their services. The right of workmen to strike is an essential element in the principle of collective bargaining.

(6) In the case of a "mixed motive" or a "mixed purpose" for the conspiracy, the test is what is the dominant motive or the dominant purpose of the conspiracy. The test to be applied in a case of this description is – was the dominant motive of the combiners to benefit the funds of the Union or was the dominant motive to cause the injury to the employer? The test is not what is the natural result to the employers of such combined action or what is the resulting damage to the employers, but what is in truth the object in the minds of the workmen when they acted as they did. It is well established that if there is more than one purpose actuating a combination, the liability must depend on ascertaining what is the predominant purpose is.

The matter is clearly put by Viscount Simon, L.C. in 1942-1 All ER 142 as follows:

> The test is not what is the natural result to the plaintiff of such combined action or what is the resulting damage which the defendants realise, or should realise, will follow, but what is in truth the object in the minds of the combiners when they acted as they did. It is not consequence that matters, but purpose. The relevant conjunction is not, 'so that,' but 'in order that.' Next, it is to be borne in mind that there may be cases where the combination has more than one 'object' or 'purpose'. The combiners may feel that they are killing two birds with one stone, and, even though their main purpose may be to protect their own legitimate interests notwithstanding that this involves damage to the plaintiffs, they may also find a further inducement to do what they are doing by feeling that it serves the plaintiffs right. The analysis of human impulses soon leads us into the quagmire of mixed motives, and, even if we avoid the words 'motive', there may be more than a single purpose or object. It is enough to say that, if there is more than one purpose

> actuating a combination, liability must depend on ascertaining the predominant purpose. If the predominant purpose is to damage another person and damage results, that is tortious conspiracy. If the predominant purpose is the lawful protection or promotion of any lawful interest of the combiners, it is not a tortious conspiracy, even though it causes damage to another person.

(7) In the present case the arbitrators have failed to apply this principle in adjudicating the liability of the workers to pay compensation. It is conceded by the arbitrators that the workers commenced the strike because their demands for payment of bonus had not been complied with. It is also stated by the arbitrators in the award that the reason for the strike was the non-implementation of Shri Jee Jee Bhoy's award with regard to the wages of casual workmen and also non-implementation of the settlement dated 2nd May, 1957. But the arbitrators have said that the strike was resorted to by each of the Unions "for ulterior objects of their own." The arbitrators have not found what were the "ulterior objects" for which the Unions entered into a strike. Even assuming that there were ulterior objects impelling the Unions to enter into a strike, it was the duty of the arbitrators to go into the question as to what was the dominant purpose of the strike and whether the dominant purpose was not promotion of the legitimate interest of the Trade Unions for better wage conditions for the workers concerned. In failing to apply the principle of law laid down by the House of Lords in 1942-1 All ER 42, the arbitrators have misdirected themselves in law, and the award of compensation to the Companies granted by the arbitrators must be quashed on this ground.

(8) I shall then proceed to consider the argument of Counsel for the petitioners that the arbitrators have committed an error of law in holding that the workers were not protected by Section 18(1) of the Trade Union Act, which is to the following effect:

> It is manifest that the question whether the strike was legal or illegal under Section 24(1) of the Industrial Disputes Act has no bearing on the question of immunity furnished by Section 18 of the Trade Unions Act.

The view I have expressed is borne out by a comparison of the English law on this point. S. 4 of the Trade Disputes Act, 1906, provides that no action for a tort of any kind shall lie against a trade union so as to charge the union funds. It is also provided by Section 3 of the Act that

> An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he will.

With regard to the interpretation of S. 3 of the Trade Disputes Act it was held by the Court of Appeal in ***Dallimore* v. *Williams and Jesson*** [(1914) 30 TLR 432] that if there is an existing trade dispute the act need not be done solely or even honestly in contemplation or furtherance thereof to obtain the protection of that section. It was further held in ***Fowler* v. *Kibble*** [(1922) 1 Ch 487] that an act is not deprived of the protection of S. 3 of the Trade Disputes Act because it is punishable under S. 7 of the Conspiracy and Protection of Property Act, 1875. It is manifest in the present case that the striking workmen are not prevented from taking recourse to the protection of S. 18 of the Trade Unions Act mainly because the strike

was illegal under S. 24(1) of the Industrial Disputes Act. It was still the duty of the arbitrators to find whether the strike was undertaken by the workmen in furtherance of a trade dispute within the meaning of S. 18 of the Trade Unions Act.

It was pointed out by the Government Advocate on behalf of the respondents that there was a finding of the arbitrators in paragraphs 21 and 27(c) of the award that the strike was not resorted to in furtherance of a trade dispute. But this finding is vitiated in law because the arbitrators do not say upon what evidence this finding is based. As I have already said, the arbitrators have said in their award that the strike was resorted to because the demand for payment of bonus was not complied with and also because there was non-implementation of Shri Jee Jee Bhoy's award relating to wages of casual workmen. It is true that in paragraph 21 of the award the arbitrators have said that the Unions have resorted to a strike with ulterior objects of their own. But the arbitrators have not mentioned anywhere as to what these ulterior objects were. The arbitrators have not also analysed the question as to whether the predominant purpose of the workmen in resorting to the strike was not the furtherance of a trade dispute. As I have already pointed out, the arbitrators have misdirected themselves in law in holding that the workmen cannot claim immunity under S. 18 of the Trade Unions Act because the strike is illegal under S. 24(1) of the Industrial Disputes Act. I consider that the award of the arbitrators regarding payment of compensation to the employers is vitiated by this fundamental mistake of law.

(9) On behalf of the petitioners learned Counsel submitted that the Companies had no right of civil action for damages against the workers who had taken part in an illegal strike. It was submitted that the only remedy open to the Companies was criminal prosecution under S. 26(1) of the Industrial Disputes Act, which is in the following terms:

> 26. (1) Any workman who commences, continues or otherwise acts in furtherance of, a strike which is illegal under this Act, shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or both.

The submission of the learned counsel was that special penalty has been attached to the breach of Ss. 23 and 24 of the Industrial Disputes Act, and that remedy is exclusive and the companies have no civil remedy in addition to the remedy expressly provided by the statute.

The opposite view point was put forward on behalf of the respondent-Companies and it was contended that apart from the express penalty provided under S. 26(1) of the Industrial Disputes Act the Companies had a right to civil action for breach of Ss. 23 and 24 of the Act.

The question raised depends upon the intention of the Legislature in the enactment of the Industrial Disputes Act. Was it intended to make the duty imposed upon the employees and the employers by Ss. 23 and 24 of the Act a duty owed to the individuals aggrieved, or was it intended to be a public duty only?

In the approach to this question it is necessary to have regard to certain principles which afford guidance in ascertaining the legislative intent. For example, if a statutory duty is prescribed but no remedy by way of penalty or otherwise for its breach is imposed, it can be assumed that a right of civil action accrues to the person who is damnified by the breach, for, if it were not so, the statute would be wholly ineffective. But "where an Act creates an obligation, and enforces the performance in a specified manner, we take it to be a general rule

that performance cannot be enforced in any other manner" (Lord Tenterdoan, C.J. in ***Doe D. Rochester* v. *Bridges*** [(1831) 1 B and Ad. 847, 859]. This passage was cited with approval by the Earl of Halsbury, L.C. in ***Pasmore* v. *Oswaldtwistle Urban Council*** [1898 AC 387, 394]. But this general rule is subject to exceptions. It may be that, though a specific remedy is provided by the Act yet the person injured has a personal right of action in addition. That depends on the scope of language of the particular statute.

(12) In the application of this principle, it is necessary to consider the scope and object of the Industrial Disputes Act and to ascertain for whose benefit the protection of Sections 22 and 23 are intended. These sections undoubtedly imposed a duty on the employees, but the important question is to whom was the duty owed? Was it intended by the framers of the Act to make the duty one which was owed to the employers, or was it a duty owed to the public? The preamble of the Act stated:

> It is expedient to make provision for the investigation and settlement of industrial disputes, and for certain other purposes.

There is nothing in the title or preamble of this Act to suggest that it is a charter for the employers or the employees or that it is enacted solely for the benefit of any particular class of employers or employees. On the contrary, the preamble suggests that the object of the Act is the proper adjustment of relations between capital and labour, preservation of law and order, and the increase of industrial production.

(14) Upon the consideration of the various provisions of the Act it is manifest that the overriding purpose of the Act is the benefit of the community and not the benefit of the employees or the employers. It is true that S. 24 imposes a statutory duty on the employees not to commence or declare an illegal strike. But it is manifest that if there is a breach of this statutory duty on the part of the employees, the employer has no right of Civil action against the employees in default apart from the statutory penalty provided by Section 26(1). Similarly, if the employer declares an illegal lock-out, there is a breach of the statutory obligation created by S. 24, but the employees have no right of civil action. The exclusive remedy open to them is criminal prosecution under Section 26(2) of the Act. For these reasons I hold that the duties imposed by Ss. 22, 23 and 24 of the Act are statutory duties owed by the employees not to the employers concerned but duties owed to the public which can be solely enforced by criminal prosecution under S. 26(1) of the Act. It follows, therefore, that the employers have no right of civil action for damages against the employees participating in an illegal strike within the meaning of S. 24(1) of the Industrial Disputes Act.

(18) For these reasons I hold that the award of the arbitrators in all the five references under Section 10-A of the Industrial Disputes Act must be held to be ultra vires and illegal so far as the arbitrators have granted compensation to the employees by the workmen participating in the strike for the losses due to the strike. In my opinion the petitioners are entitled to grant of a writ in the nature of certiorari under Article 226 of the Constitution for quashing the award of the arbitrators in all the five references so far as they granted compensation to the employers by the workmen concerned for the losses due to the strike.

(19) I would accordingly allow these applications, but I do not propose to make any order as to costs.

Standard Chartered Bank **v.** *Chartered Bank Employees Union*

(1997) 68 DLT 391

S.D. PANDIT, J. – 2. Suit No. 2551/95 is brought by the plaintiff Standard Chartered Bank against in all five defendants. Defendant No. 1, Standard Chartered Bank Employees Union, is the Union of the employees of the plaintiff Bank whereas defendants 2 to 5 are its office-bearers. Out of these office bearers defendant No. 4 was working in the Loan Centre Unit of the plaintiff's branch at 17, Parliament Street, New Delhi and by letter dated 1.11.1995 he has been transferred to Darya Ganj Branch and the said order was served on the defendant No. 4 on 2.11.1995. It is the case of the plaintiff that on 3.11.1995 the defendants and its members started shouting pitched slogans against the management using filthy language for its officers and created unruly scenes, thumped the tables and caused hindrance to the officers in discharging their duties and also obstructing the customers. Plaintiff further alleges that the defendants have also extended threats of physical violence to the officers of the plaintiff Bank and they have resorted to illegal strike. They had also made it known to the plaintiff that they would intensify and would instigate and resort to more violent activities and hold demonstrations, gheraos, dharnas, strike and obstruct ingress and egress of the plaintiff officers, willing employees as well as the customers. All these things are being committed in order to put pressure on the plaintiff and to coerce the plaintiff to withdraw the transfer order. Plaintiff has, therefore, filed the present suit to get a decree of perpetual injunction to restrain defendants and its employees from instigating and abetting other employees and to resort to strike, holding of demonstrations, shouting slogans, resorting to dharnas, gheraos and putting up loudspeakers within the radius of 500 metres on all sides of the plaintiff's branch at 17, Parliament Street, New Delhi.

3. Along with the suit plaintiff has filed interim application, viz., IA.1240/95 seeking *ad-interim* injunction and this Court was pleased to pass *ex-parte* order of *ad-interim* injunction with a show-cause notice as to why the *ad-interim* injunction issued against them should not be made absolute.

4. In pursuance of the said show-cause notice the defendants have put in appearance. They have filed their objections to the interim application. They have also filed written statement to the main suit and they have filed another application, IA. 11567/95 under Order XXXIX Rule 4 to vacate the order of *ad-interim* injunction.

5. It is contended by the defendants that the transfer of defendant No. 4 by the plaintiff is contrary to the provisions of Sastri Award, which is binding against the plaintiff. They further contended that they have never given any threats of causing physical violence and they had only done peaceful demonstration and that too out of the Bank building. They contended that the plaintiff has misled the Court by making false allegations against them and has obtained *ex-parte* order of ad-interim injunction. They further contended that it is their fundamental right to go on strike and that there cannot be any order of injunction against them from proceeding on strike. They contended that they never intended to obstruct the working of the plaintiff Bank when they themselves are the employees of the same. They had never tried to instigate any worker or had threatened any officer of the plaintiff or had obstructed any

customer coming to the Bank. Therefore, in these circumstances, they seek the vacation of the *ex-parte* order of *ad-interim* injunction.

6. Thus, in view of the controversy between the parties, I have to consider the question as to whether the defendants have got the right to go on strike and whether there could be any order of injunction against the defendants. It is the contention of the defendants that the transfer of defendant No. 4 is contrary to the provisions of Sastry Award. There is no dispute over the fact that Sastry Award is binding against the plaintiff as well as the defendants. Defendants are relying on the following observations in the Sastry Award:

(1) Every registered Bank employees Union from time-to-time shall furnish the Bank with the names of the President, Vice-President and the Secretaries of the union;

(2) Except in very special cases, whenever the transfer of any of the above-mentioned office bearer is contemplated, at least five clear working days' notice should be put up on the notice boards of the Bank of such contemplated action;

(3) Any representations, written or oral, made by the union shall be considered by the Bank;

(4) If any order of transfer is ultimately made, a record shall be made by the Bank of such representations and the Bank's reasons for regarding them as inadequate; and

(5) The decision shall be communicated to the union as well as to employee concerned.

7. It is an admitted fact that defendant No. 4 has been transferred from one office to another office of the plaintiff and it is also an admitted fact that the procedure laid down by Sastry Award was not followed before issuing the said transfer order. It is not at all necessary for me to go into the question as to whether the transfer of defendant No. 4 is contemplated by the above-quoted provisions of Sastry Award because to make any observations in respect of this would amount to deciding the main suit substantially and the controversy between the parties could be decided without recording even any *prima facie* finding regarding the said controversy. Assuming for the sake of convenience the contention of the defendants that the transfer of defendant No. 4 is contrary to the provisions of Sastry Award whether they are entitled to go on strike or not will have to be considered. Learned Counsel for the defendants has referred to the provisions of Section 10(1) of the Industrial Disputes Act and contended that if at all the plaintiff was aggrieved by their activities they ought to have approached the Government and the Government ought to have referred the industrial dispute to a Competent Authority and while making such a reference the Government is to pass an order prohibiting continuance of any strike or lockout. But the plaintiff cannot come before the Court and get the relief because it is the fundamental right of a worker to go on strike. No doubt in view of the provisions of Article 19 citizens have freedom of speech, freedom to form association or union but that does not mean they can exercise the said right at any public place they please to exercise the same. According to learned Counsel for the defendants, employees are entitled to have demonstration to get their grievances redressed but it must be remembered that they have no right to indulge in undignified activities in the office premises of the employer and interfere in the working of the Company. [see ***Railway Board* v. *Niranjan Singh***, AIR 1969 SC 66].

8. In support of his contention learned Counsel for the defendants has cited before me the case of ***B.R. Singh* v. *Union of India*** [1989 Supp. 1 SCR 257]. He has put reliance on the following observations on page 270:

> The right to form associations or unions is a fundamental right under Article 19(1)(c) of the Constitution. Section 8 of the Trade Unions Act provides for registration of a trade union if all the requirements of the said enactment are fulfilled. The right to form associations and unions and provide for their registration was recognised obviously for conferring certain rights on trade unions. The necessity to form unions is obviously for voicing the demands and grievances of labour. Trade unionists act as mouthpieces of labour. The strength of a trade union depends on its membership. Therefore, trade unions with sufficient membership strength are able to bargain more effectively with the managements. This bargaining power would be considered reduced if it is not permitted to demonstrate. Strike in a given situation is only a form of demonstration. There are different modes of demonstrations, e.g., go-slow, sit-in, work-to-rule, absentism, etc., and strike is one such mode of demonstration by workers for their rights. The right to demonstrate and, therefore, the right to strike is an important weapon in the armoury of the workers. This right has been recognised by almost all democratic coutnries. Though not raised to the high pedestal of a fundamental right, it is recognised as a mode of redress for resolving the grievances of workers.

But in the same very para on page 270, it has been observed as under:

> But the right to strike is not absolute under our industrial jurisprudence and restrictions have been placed on it. These are also to be found in Sections 10(3), 10A(4A), 22 and 23 of the Industrial Disputes Act, 1947 ('ID Act' for short). Section 10(3) empowers the appropriate Government to prohibit the continuance of a strike if it is in connection with a dispute referred to one of the fora created under the said statute. Section 10A(4A) confers similar power on the appropriate Government where the industrial dispute which is the cause of the strike is referred to Arbitration and a notification in that behalf is issued under Section 10(3A).

9. Section 22 of the Industrial Disputes Act, 1947 lays down that no person employed in public utility service shall go on strike in breach of contract without giving the employer a notice within six weeks before striking and within 14 days of giving of such notice. The Central Government had issued a notification under Section 2(n)(vi) by which the Banking institutes are mentioned as one of the specified industries of public utility.

10. Apart from this, even assuming that they are entitled to go on strike they cannot exercise the said right so as to cause nuisance to the employer. Their right to go on strike is not unlimited. As the Indian citizens when they want to exercise the fundamental right to form a union and to have demonstrations for the redressal of their grievances, they have got to remember that they have also got a reciprocal duty so as not to cause nuisance or mental or physical danger to their employers and others. As the employer can move the Government and the Government can refer the disputes to the Industrial Court, it is equally open for defendant No. 4 to approach the Labour Court to challenge his transfer. He as well as

defendant No. 1, cannot take the law in their hands and behave and act in such a manner so as to cause nuisance to others. No doubt it is their contention that the transfer of defendant No. 4 is illegal and, therefore, they are entitled to go on strike but for that purpose they must follow the procedure laid down by Section 22 of the Industrial Disputes Act and after following the said procedure they can exercise their right to go on strike by bearing in mind that they cannot cause nuisance to the plaintiff or others.

11. Learned Counsel for the defendant contended that when they are entitled to go on strike they are entitled to have posters and banners as well as demonstrations. But they cannot have the demonstrations, dharnas or sticking of posters and tying of banners within the premises of their employer. They can have peaceful demonstrations out of the premises of the employer. They can, after following the procedure under Section 22 of the Industrial Disputes Act, use black strips or other modes of showing their displeasure and for being on strike. They can put up banners or posters which are not obscene or obnoxious but that too not within the building of their employer.

12. By IA.46/96 the plaintiffs are seeking an order of *ad-interim* injunction to restrain the defendants from publishing and circulating or displaying any pamphlets or any other material within the plaintiff's premises as well as carrying on themselves mouth masks, caps, any playcards, badges and/or any improper apparel or to participate, organise or to sit on relay hunger strike. I have made it quite clear in my earlier discussion that before going on strike the defendants will have to comply with the provisions of Sub-section (1) of Section 22 of Industrial Disputes Act. There could not be any injunction in absolute manner preventing them from going on strike. If they happen to comply with Sub-section (1) of Section 22 then they are entitled to go on strike and as the strike is their fundamental right this Court cannot restrain them from exercising the same. Similarly, the using of badges or putting mask on the mouth or wearing some caps indicating that they are going to strike if they happen to fulfil the provisions of Section 22 of the Industrial Disputes Act, the Court cannot restrain them from doing so. It has been observed by the Apex Court in the case of *B.R. Singh* v. *Union of India* (supra) that strike is a form of demonstration against the activities of the employer and go-slow, sit-in, work-to-rule, absentism are the modes of demonstrations and the workers have got right to make such demonstrations. Therefore, the claim made by the plaintiff in IA.46/96 could not be absolutely allowed. I have made it quite clear in my earlier discussion that they cannot make use of the premises of the plaintiff for displaying their banners, pamphlets or hand-bills but they cannot be prevented from making use of the same out of the premises of the plaintiff. If there happened to be any defamatory or obscene banners of pamphlets the plaintiffs have got the proper remedy under the law taking action for the same but Court cannot pass an order in anticipation of commission of such acts.

13. Therefore, in view of the above discussion I hold that IA.46/96 shall stand partly allowed and the order passed in IA.11420/95 will stand modified in the following terms:

> Defendants 1 to 5 and their employees, members, office-bearers and agents are restrained by *ad-interim* injunction from instigating and abetting other employees other than the members of defendant No. 1 to resort to strike.

Defendants 1 to 5, their employees, members, office-bearers and agents are hereby further restrained by an *ad-interim* injunction from resorting to strike unless they comply with the provisions of Sub-section (1) of Section 22 of the Industrial Disputes Act.

Defendants Nos. 1 to 5, their employees, members, office-bearers and agents are hereby further restrained by an *ad-interim* injunction from holding any demonstrations in front of the office building or adjoining office building within an area of 50 sq. metres around the building by putting up loud-speakers between office hours.

However, it is made quite clear that they can hold peaceful demonstrations if they happen to proceed on strike or they intend to proceed on strike during lunch hours and before and after office hours of the plaintiff Bank in the parking area adjoining Bank of Baroda and in front of DLF building without causing obstruction to public at large.

Defendants 1 to 5, their employees, members, office-bearers and agents are hereby further restrained from posting or putting up any pamphlets and banners on any walls or in the building of the plaintiff Bank.

Defendants 1 to 5, their employees, members, office-bearers and agents are further restrained from raising slogans or preventing ingress and egress of any office bearer, members of the staff and customers of the plaintiff Bank.

The prayer of the plaintiff to restrain the defendants, its employees, members, office-bearers and agents from putting up badges or mouth-masks or cards on their clothes or wearing caps stands rejected.

* * * * *

Common Cause v. *Union of India*

(1996) 1 Current Consumer Cases 242 (NCDRC)

V. BALAKRISHNA ERADI, J., PRESIDENT - This complaint petition filed by the well-known consumer Organisation "Common Cause" seeking redressal of the grievance of air passengers who were put to great amount of inconvenience and hardship on account of disruption of a large number of flights of Air India caused by reason of a sudden strike resorted to by Members of the Indian Flight Engineers Association (Respondent No. 3) in February, 1993. It is averred in the petition that for a period of about six weeks from February 27, 1993, nearly 200 flights normally operated by Air India (Respondent No. 2) had to be cancelled due to the strike by its Flights Engineers who are members of the Indian Flight Engineers' Association (Respondent NO. 3) and as a result thereof many persons who had booked their journeys by air India flights were put to great hardship and loss and the image of the Airline which is the National Flag Carrier of this country had severely suffered within the country as well as abroad. In addition, huge loss had been caused by reason of strike to Air India which is a public sector enterprise and such loss is ultimately a loss to the general public.

2. The case of the complainant is that the second respondent viz. Air India as well as the members of the Indian Flight Engineers Association (Respondent No. 3) which is a trade union owe a duty to the passengers who had booked their flights in Air India and hence who are consumers to see that the service which had been hired by them on payment of very high charges by way of air fare was duly performed without any deficiency and both Air India as well as the third respondent union are answerable to the consumers for the inconvenience and loss caused to them by reason of the strike which necessitated cancellation of innumerable flights. The complainant has estimated the loss as suffered by roughly about 30,000 passengers whose flights were cancelled on account of the strike at the minimum figure of Rs. 30 crores. Since the purpose of the instant petition is to establish the accountability of both Air India and the members of Indian Flight Engineers' Association to the consumer travelling public in the matter of due performance of the contract of carriage without any disruption by reason of sudden strikes etc. the petitioner has prayed for the award of only nominal compensation on Rs. 10 lakhs to be paid by Air India – respondent No.2 and Rs. 5 lakhs by respondent No.3 (Indian Flight Engineers Association) with a request that both the aforesaid payments may be directed to be made to the Consumer Welfare Fund established by the Union of India. There is a further prayer in the petition that the respondents should be directed to take appropriate steps to ensure that in future strikes of this nature do not come about so as to cause serious problems and losses to the passengers who have booked their flights by Airlines.

3. The second respondent - Air India - in its written statement has pleaded *inter alia* that its flight schedules were disrupted from February 27, 1993 for about six weeks solely on account of the fact that the members of respondent No.3 Association resorted to an illegal strike and they did not assume work in spite of the fact that the Government of India, Ministry of Labour had by its order dated April 6, 1993 declared the strike to be illegal and prohibited its continuance in public interest with immediate effect. It is, therefore, contended by

respondent No.2 that the inconvenience caused to the passengers by reason of the disruption of flights was not on account of any negligence or deficiency on the part of the Airline and hence no claim for compensation can be made against it. Elaborating on the circumstances under which the strike was suddenly launched by the Indian Flight Engineers' Association – respondent No.2 has stated that no notice as contemplated by Section 22 of the Industrial Disputes Act, 1947 had been given by respondent No.3 Association before its members went on strike. It is further stated that the strike which was ostensibly launched on the ground that certain demands made by the association had not been satisfactorily responded to by the Management of the Air India was launched at a time when a reference concerning those very demands was pending before the National Industrial Tribunal for adjudication and conciliation proceedings were also pending before the Regional Labour Commissioner (Bombay Central) on some of the demands.

4. Reference has been made in the written statement of Air India to the decision of this Commission in ***Consumer Unity and Trust Society, Calcutta v. Chairman and Managing Director, Bank of Baroda*** [1991 (1) C.P.R. 263]. Reliance has been placed on the observations contained therein to the effect that any disruption of service caused by an illegal strike resorted to by the employees of the opposite party – Bank will fall within the well known exception of "*force majeure*" and it cannot therefore form the basis for the award of any compensation under the Consumer Protection Act since the failure to perform the service is not attributable to any negligence on the part of Bank.

5. The Indian Flight Engineers' Association (Respondent No.3) has raised a preliminary objection that the members of the association or their association are not under any direct or indirect contractual obligation in law to provide any service to the passengers making use of Air India flights and hence the complaint filed against the association under the Consumer Protection Act is wholly misconceived. It is further contended in the statement of objections filed by respondent No.3 that the issue that led to the agitation by Flight Engineers' with effect from February 27, 1993 pertained to a labour dispute between Air India and the Indian Flight Engineers' Association and no consumer complaint can legally arise out of any such agitation launched by a Trade Union. Another plea raised by the Association is that the present proceedings in so far as they are against the third respondent are barred by Seciton 18 of the Trade Unions Act, 1926. It is further averred that workmen are within their rights to raise demands on the Management and to take such actions as are necessary including strikes as part of the process of collective bargaining. On this basis the Respondent No.3 has contended that no consumer complaint can be entertained or adjudicated upon in such way as to interfere with the said right of the workmen to agitate peacefully for pressing the demands made by them on the employer.

6. In its counter affidavit Respondent No.3 has elaborately set out its version of the events which led to the agitation by Flight Engineers' starting from February 27, 1993 and the Association has attempted to place the entire blame on the Management for "pushing the members of the Respondent No.3" to resort to the extreme step of going on a sudden strike. It is unnecessary for the purpose of this case to set out those averments *in extenso*.

7. Shri H.D. Shourie, Director, Common Cause appeared and argued the case on the side of the complainant, Shri Lalit Bhasin, Advocate appearing on behalf of Air India and Shri

K.P. Pankajan, General Secretary of the Indian Flight Engineers' Association appeared in person and presented the case on behalf of Respondent No.3.

8. At the very outset we have to consider the objections raised by Respondent No.3 that the Indian Flight Engineers' Association has no contractual obligation in law towards the passengers making use of the Air India flights for their journeys to different destinations. In our opinion, the said plea put forward by the Association is totally misconceived and clearly untenable in law. The members of the Flight Engineers' Association form an integral part of the Air India Organisation and their salaries are paid out of the funds collected and realised by way of air fare charges collected by Air India from the passengers. For the proper performance of the contract of carriage and safe operation of flights in accordance with the announced schedules, every department of the Airline has equal responsibility to discharge its duties and functions efficiently without any negligence or deficiency. It is the collective responsibility of all the departments such as the traffic staff, commercial staff and engineering staff on the ground, the cockpit crew comprising of the pilots and the flight engineers and the cabin crew consisting of the personnel who are in-charge of attending to the needs, safety and comfort of the passengers, each having its own definite role to discharge. In case of default and deficiency in the proper performance of the duties by anyone of these functionaries, the person or persons concerned will be clearly answerable in law to the passengers who are put to inconvenience and loss by reason of such default or negligence. The contract of carriage entered into with Air India is a contract with the whole organisation comprising of these different limbs and it is not open to anyone of these constituent units to contend that it has no responsibility of contractual obligation towards the passengers who have booked and paid for their travel by the flights of Airlines. In the event of deficiency in service and consequent loss being suffered by passenger, action under the Consumer Protection Act can be instituted not only against the corporate personality of Air India but also against the erring staff member or group of members of its component department responsible for the deficiency in service.

9. In ***Indian Medical Association*** **v.** ***V.P. Shantha*** [(1995) CPJ 1(SC)], the Supreme Court had to consider inter alia the question whether doctors who are working in (Government or Private Hospitals) and are paid a salary are liable to be proceeded against under the provisions of the Consumer Protection Act in the event of any deficiency in service being made out in the matter of providing proper treatment to a patient. In its judgment, the Supreme Court has stated that Government Hospitals/Nursing Homes and Private Hospitals/Nursing Homes broadly fall in three categories:-

(i) where services are rendered free of charge to everybody availing the said services.

(ii) where charges are required to be paid by everybody availing the services and

(iii) where charges are required to be paid by persons availing services but certain categories of persons who cannot afford to pay are rendered service free of charges.

10. The hospitals falling in category (i) being outside the purview of the consumer Protection Act the Court held that the doctors employed in those hospitals will not also come within the scope of the Art. The Court thereafter proceeded to discuss the question whether the individual doctors who are employed for salary in hospitals belonging to categories (ii)

and (iii) would fall within the purview of the Act. Dealing with the said question, the Supreme Court observed:

> Adverting to the individual doctors employed and serving in the hospitals, we are of the view that such doctors working in the hospitals/nursing homes/dispensaries/whether Government or private – belonging to categories (ii) and (iii) above would be covered by the definition of "service" under the Act and as such are amenable to the provisions of the Act along with the management of the hospital, etc. jointly and severally.

11. In our opinion these observations conclusively lay down that persons employed on salary in an organisation which is rendering service for consideration are equally amenable to the provisions of the Act along with the Management of the said organisation even though there may not be any direct privity of contract as between the persons hiring or availing of the service and the concerned employees. Hence we have no hesitation to hold that in the event of deficiency in service and consequent loss being suffered by passengers travelling by an Airline, action under the Consumer Protection Act can be instituted not only against the Air-Line but also against the erring member or group of members of its component staff responsible for the deficiency in service.

12. Coming to the facts of the present case, it is not in dispute that there was a serious disruption of many of the flights of Air India for a period of about six weeks from 27th February, 1993 on account of a sudden strike resorted to by the members of the Indian Flight Engineers' Association. It cannot admit of any doubt that great amount of inconvenience, hardship and loss must have been caused to large number of passengers who had booked their journeys to different destinations by Air India flights scheduled to operate during the aforesaid period of disruption of services. The complainant is, therefore, right in its submission that the affected passengers have a legitimate grievance in respect of the said matter.

13. It is true that Respondent No.3 is a Trade Union and under law it is entitled to make demands on the employer and to take all legitimate steps for pressing those demands by the process of collective bargaining. The employees also have under Industrial Law a right to resort to strike by adopting peaceful means after duly conforming to the procedure laid down by the concerned statutes regarding the giving of requisite mandatory notice etc. There is no right in any Trade Union to resort to an illegal strike in contravention of the mandatory prerequisite laid down by law governing Industrial and Labour relation. The very purpose of making the service of a notice of stipulated duration mandatory is to avoid sudden disruption of the industrial activity which may result in grave and irreparable hardship, inconvenience and loss to the members of the public.

14. In the present case, there are clear and categorical averments in the counter filed by Air India that the strike in question had been resorted to by the Flight Engineers' Association without due prior notice and that the strike had been declared by the Government of India, Ministry of Labour to be an illegal and its continuance had been prohibited by an order dated April 6, 1993. These averments have not been specifically controverted in the statement filed by the Flight Engineers' Association (Respondent No.3). On the material now available on

record, it will be right to assume that the strike had been suddenly launched by the third respondent association at a time when adjudication proceedings were pending before the National Industrial Tribunal, Bombay and some conciliation proceedings were also pending before the Regional Labour Commissioner (Bombay Central).

15. Coming to the claim for compensation made against Air India, we have already found that the disruption of flights during the period of about six weeks from February 27, 1993 was caused solely on account of an illegal strike launched by the Indian Flight Engineers' Association. In ***Consumer Unity and Trust Society, Calcutta* v.** ***Chairman and Managing Director, Bank of Baroda*** [1991 (1) C.P.R. 263] this Commission had occasion to consider whether the failure of a Bank to conduct banking operations from its Branches during the period of an illegal strike resorted to by its employees would constitute deficiency in service so far as to render the Bank liable to pay compensation under the Act to its account holders. It was held that since the suspension of Banking operations was the direct consequence of an illegal strike involving unlawful obstruction by the striking workmen of ingress into and egress from the Bank's Offices by the officers and willing members of staff, it cannot be said that the inconvenience, loss or injury which was undoubtedly caused to large numbers of constituents of the Bank was a result of negligence on the part of the respondent Bank and that on the other hand it was a clear case falling within the well known exception of '*force majeure*'.

16. In the light of the said principle enunciated in the above ruling, we have no hesitation to hold that no negligence has been made out against Air India and hence there are no valid grounds for the award of any compensation as against the Airline. However, we consider it necessary to make it clear that we are not be understood as laying down any principle of general application that in no case of strike by its employees can an Airline be made liable for payment of compensation. If, in any given case, it is shown that the strike was not illegal and had been occasioned by any negligence on the part of the Airlines in the performance of its administrative function of good governance and maintenance of proper employer-employee relations, different consideration may probably apply.

17. As already noticed, an objection has been taken by the Indian Flight Engineers' Association in its Counter-Statement that the present proceedings instituted against it under the Consumer Protection Act are barred under Section 18 of the Trade Unions Act, 1926. We do not see any merit in this contention. Firstly, Section 18 operates only to a bar to the institution of a suit or other legal proceedings in any Civil Court against any registered Trade Union in respect of any Act done in contemplation or furtherance of a trade dispute etc. The Fora constituted under the Consumer Protection Act are not Civil Courts and proceedings instituted before the Fora are not civil suits or other legal proceedings instituted in Civil Courts. That this is the correct legal position has been laid down by this Commission in ***N.K. Modi* v.** ***M/s Fair Air Engineers Pvt. Ltd***. [1(1993) CPJ 5(NC)]. Hence we hold that the provisions of Section 18 of the Trade Unions Act do not operate as a bar to the filing of a complaint against a Trade Union under the provisions of the Consumer Protection Act.

18. Further, the bar imposed by Section 18 is in respect of only certain types of claims made against a Trade Union in respect of any act done by it "in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that

such act induces some other person to break a contract of employment or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills". The complaint filed in the present case does not fall within any of the categories described in Section 18 and hence it is totally unaffected by the bar imposed by the said Section.

19. Inasmuch as we have found that the strike launched by the Indian Flight Engineer's Association was illegal and it could not therefore, be regarded as a legitimate Trade Union activity it has to follow that the third respondent and its members were responsible for causing disruption of flights resulting in great inconvenience, hardship and loss to the passengers who had booked their journeys by Air India flights during the period of disruption caused by the strike. It is to be noted in this connection that none of the affected passengers is before this Commission as a complainant. Further it was stated before us by Mr. H.D. Shourie with his usual fairness that his real purpose in filing the present petition is only to get a categorical pronouncement form this Commission affirming accountability of the employees of the Airlines for the hardship and loss caused to the passengers by reason of disruption of flights by launching an illegal strike. Now that the legal position has been discussed and explained by us and the obligation of the employees of Air India as well as their associations towards the passengers has been well defined by this order, the interests of justice would be adequately met in the present case if we record our disapproval of the attitude of total lack of concern on the part of the third respondent Association and its members about the great amount of inconvenience and hardships caused to the passengers and also to the reputation of the National Airline of this country. In addition, we also think it necessary to administer a strong word of caution that in case similar instances of disruption of services by illegal strikes or agitations come to the notice of this Commission, in future, on the part of the employees of any organisation rendering service to the public for consideration or any Association or Union of such employees, we will be dealing with the matter in a very strict manner and will have no hesitation to award proper compensation to the consumers who are thereby affected and aggrieved. If, however, the disruption in service is the consequence of a strike or agitation legally launched in conformity with the provisions of the law governing Industrial and Labour relations the employees or their unions, no proceedings under the Consumer Protection Act can be instituted against the employees or their Associations/Unions.

20. We do hope and trust that henceforth the rights of consumers will be duly borne in mind by the Management as well as by the Trade Unions representing the workers and that every effort will be made to ensure that as far as possible no avoidable inconvenience is caused to the consumers by causing disruption or cessation of the service expected to be caused to the consumers by causing disruption or cessation of the service expected to be provided to them. Even in the event of a lawful strike being launched after due notice, there is a duty on the part of the Management as well as the Trade Unions to take necessary steps sufficiently in advance to put the consumer public by the particular organisation on account of the impending strike so that the members of the public may take their alternative arrangements, if they wish so to do. In this context, we consider it necessary to issue a direction to Air India on terms similar to what was issued by this Commission to the Indian Banks Association in the case of ***Consumer Unity and Trust Society, Calcutta*** **v.** ***Chairman***

and Managing Director Bank of Baroda [(1986-1995) *CONSUME*R 233 (NS)] that henceforth whenever a strike notice is served by any section of employees or their Trade Union on Air India (this would apply equally to all Airlines similarly situated) and the strike appears to be imminent, the Airlines shall insert a publication in all the leading newspaper of the country informing the public about the possibility of there being a strike so that the consumer may not be taken by surprise by the strike but may be enabled to make such alternative arrangements as are possible so as to mitigate the hardship that is otherwise bound to be caused to them.

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PART – B : INDUSTRIAL DISPUTES

Bangalore Water Supply & Sewerage Board **v.** *A. Rajappa*

AIR 1978 SC 548

V.R. KRISHNA IYER, J. - 25. The rather zigzag course of the landmark cases and the tangled web of judicial thought have perplexed one branch of Industrial Law, resulting from obfuscation of the basic concept of 'industry' under the Industrial Disputes Act, 1947 (for short, the Act). This bizarre situation, 30 years after the Act was passed and industrialisation had advanced on a national scale, could not be allowed to continue longer. So, the urgent need for an authoritative resolution of this confused position which has survived - indeed, has been accentuated by - the judgment of the six-member Bench in ***Safdarjung*** (***Management of Safdar Jang Hospital, New Delhi*** **v.** ***Kuldip Singh Sethi*** [AIR 1970 SC 1407)] if we may say so with deep respect, has led to a reference to a larger Bench of this die-hard dispute as to what an 'industry' under Section *2*(*j*) means.

26. Legalese and logomachy have the genius to inject mystique into common words, alienating the laity in effect from the rule of law. What is the common worker or ordinary employer to do if he is bewildered by a definitional dilemma and is unsure whether his enterprise, say, a hospital, a university, a library, a service club, a local body, a research institute, a pinjarapole, a chamber of commerce, a Gandhi Ashram, is an industry at all?

32. Back to the single problem of thorny simplicity: what is an 'industry'? Historically speaking, this Indian statute has its beginnings in Australia, even as the bulk of our *corpus juris,* with a colonial flavour, is a carbon copy of English law. Therefore, in interpretation, we may seek light Australasially, and so it is that the precedents of this Court have drawn on Australian cases as on English dictionaries. But India is India and its individuality, in law and society, is attested by its National Charter, so that statutory construction must be home-spun even if hospitable to alien thinking.

33. The reference to us runs thus:

> One should have thought that an activist Parliament by taking quick policy decisions and by resorting to amendatory processes would have simplified, clarified and de-limited the definition of "industry", and, if we may add "workman". Had this been done with aware and alert speed by the Legislature, litigation which is the besetting sin of industrial life could well have been avoided by a considerable degree. That consummation may perhaps happen on a distant day, but this Court has to decide from day to day disputes involving this branch of industrial law and give guidance by declaring what is an industry, through the process of interpretation and re-interpretation, with a murky accumulation of case-law. Counsels on both sides have chosen to rely on *Safdarjung* each emphasising one part or other of the decision as supporting his argument. Rulings of this Court before and after have revealed no unanimity nor struck any unison and so, we confess to an inability to discern any golden thread running through the string of decisions bearing on the issue at hand.

> (T)he chance of confusion from the crop of cases in an area where the common man has to understand and apply the law makes it desirable that there should be a comprehensive, clear and conclusive declaration as to what is an industry under the Industrial Disputes Act as it now stands. Therefore, we think it necessary to place this case before the learned Chief Justice for consideration by a larger Bench. If in the meantime the Parliament does not act, this Court may have to illumine the twilight area of law and help the industrial community carry on smoothly.

34. So, the long and short of it is what is an industry? Section 2(j) defines it:

> "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

Let us put it plain. The canons of construction are trite that we must read the statute as a whole to get a hang of it and a holistic perspective of it. We must have regard to the historical background, objects and reasons, international thoughtways, popular understanding, contextual connotation and suggestive subject-matter. Equally important, dictionaries, while not absolutely binding, are aids to ascertain meaning. Nor are we writing on a *tabula rasa.* Since ***Banerji (D.N. Banerji v. P.R. Mukherjee*** [AIR 1953 SC 58], decided a silver jubilee span of years ago, we have a heavy harvest of rulings on what is an 'industry' and we have to be guided by the variorum of criteria stated therein, as far as possible, and not spring a creative surprise on the industrial community by a stroke of freak originality.

37. A look at the definition, dictionary in hand, decisions in head and Constitution at heart, leads to some sure characteristics of an 'industry', narrowing down the twilit zone of turbid controversy. An industry is a continuity, is an organized activity, is a purposeful pursuit -- *not* any isolated adventure, desultory excursion or casual, fleeting engagement motivelessly undertaken. Such is the common feature of a trade, business, calling, manufacture - mechanical or handicraft-based - service, employment, industrial occupation or avocation. For those who know English and are not given to the luxury of splitting semantic hairs, this conclusion argues itself. The expression 'undertaking' cannot be torn off the words whose company it keeps. If birds of a feather flock together and *noscitur a sociis* is a commonsense guide to construction, 'undertaking' must be read down to conform to the restrictive characteristic shared by the society of words before and after. Nobody will torture 'undertaking' in Section *2*(*j*) to mean meditation or *musheira* which are spiritual and aesthetic undertakings. Wide meanings must fall in line and discordance must be excluded from a sound system. From ***Banerji*** to ***Safdarjung*** and beyond, this limited criterion has passed muster and we see no reason, after all the marathon of argument, to shift from this position.

38. Likewise, an 'industry' cannot exist without co-operative endeavour between employer and employee. No employer, no industry; no employee, no industry - not as a dogmatic proposition in economics but as an articulate major premise of the definition and the scheme of the Act, and as a necessary postulate of industrial disputes and statutory resolution thereof.

39. An industry is not a futility but geared to utilities in which the community has concern. And in this mundane world where law lives now, economic utilities material goods

and services, not transcendental flights nor intangible achievements - are the functional focus of industry. Therefore, no temporal utilities, no statutory industry, is axiomatic. If society, in its advance, experiences subtler realities and assigns values to them, jurisprudence may reach out to such collective good. Today, not tomorrow, is the first charge of pragmatic law of western heritage. So we are confined to material, not ethereal end products.

40. This much flows from a plain reading of the purpose and provision of the legislation and its western origin and the ratio of all the rulings. We hold these triple ingredients to be unexceptionable.

41. The relevant constitutional entry speaks of industrial and labour disputes (Entry 22 List III Schedule VII). The Preamble to the Act refers to 'the investigation and settlement of industrial disputes'. The definition of industry has to be decoded in this background and our holding is reinforced by the fact that industrial peace, collective bargaining, strikes and lock-outs, industrial adjudications, works committees of employers and employees and the like connote organised, systematic operations and collectively of workmen co-operating with their employer in producing goods and services for the community. The betterment of the workmen's lot, the avoidance of outbreaks blocking production and just and speedy settlement of disputes concern the community. In trade and business, goods and services are for the community, not for self-consumption.

42. The penumbral area arrives as we move on to the other essentials needed to make an organized, systematic activity, oriented on productive collaboration between employer and employee, an industry as defined in Section 2(*j*). Here we have to be cautious not to fall into the trap of definitional expansionism bordering on *rcductio ad absurdum* nor to truncate the obvious amplitude of the provision to fit it into our mental mould of beliefs and prejudices or social philosophy conditioned by class interests. Subjective wish shall not be father to the forensic thought, if credibility with a pluralist community is a value to be cherished. "Courts do not substitute their social and economic beliefs for the judgment of legislative bodies". [See ***Constitution of the United States of America,*** Corwin, p. xxxi]. Even so, this legislation has something to do with social justice between the 'haves' and the 'have-nots', and naive, fugitive and illogical cutbacks on the import of 'industry' may do injustice to the benignant enactment. Avoiding Scylla and Charybdis we proceed to decipher the fuller import of the definition. To sum up, the personality of the whole statute, be it remembered, has a welfare basis, it being a beneficial legislation which protects labour, promotes their contentment and regulates situations of crisis and tension where production may be imperilled by untenable strikes and blackmail lock-outs. The mechanism of the Act is geared to conferment of regulated benefits to workmen and resolution, according to a sympathetic rule of law, of the conflicts, actual or potential, between management and workmen. Its goal is amelioration of the conditions of workers, tempered by a practical sense of peaceful co-existence, to the benefit of both - not a neutral position but restraints on laissez faire and concern for the welfare of the weaker lot. Empathy with the statute is necessary to understand not merely its spirit, but also its sense. One of the vital concepts on which the whole statute is built, is 'industry' and when we approach the definition in Section *2*(*j*), we must be informed by these values. This certainly does not mean that we should strain the language of the definition to import into it what we regard as desirable in an industrial legislation, for we are not

legislating *de novo* but construing an existing Act. Crusading for a new type of legislation with dynamic ideas or humanist justice and industrial harmony cannot be under the umbrella of interpreting an old, imperfect enactment. Nevertheless, statutory diction speaks for today and tomorrow; words are semantic seeds to serve the future hour. Moreover, as earlier highlighted, it is legitimate to project the value-set of the Constitution, especially Part IV, in reading the meaning of even a pre-Constitution statute. The paramount law is paramount and Part IV sets out Directive Principles of State Policy which must guide the judiciary, like other instrumentality, in interpreting all legislation. Statutory construction is not a petrified process and the old bottle may, to the extent language and realism permit be filled with new wine. Of course, the bottle should not break or lose shape.

43. We may start the discussion with the leading case on the point, which perhaps may be treated as the mariner's compass for judicial navigation ***D. N. Banerji* v. *P. R. Mukherjee***. But before setting sail, let us map out briefly the range of dispute around the definition.

A definition is ordinarily the crystallisation of a legal concept promoting precision and rounding off blurred edges but, alas, the definition in Section *2*(*j*)*,* viewed in retrospect, has achieved the opposite. Even so, we must try to clarify. Sometimes, active interrogatories tell better than bland affirmatives and so marginal omissions notwithstanding, we will string the points together in a few questions on which we have been addressed.

44. A cynical jurist surveying the forensic scene may make unhappy comments. Counsel for the respondent Unions sounded that note. A pluralist society with a capitalist backbone, notwithstanding the innocuous adjective 'socialist' added to the Republic by the Constitution (Forty-second Amendment Act, 1976) regards profit-making as a sacrosanct value. Elitist professionalism and industrialism is sensitive to the 'worker' menace and inclines to exclude such sound and fury as 'labour unrest from its sanctified precincts by judicially de-industrialising the activities of professional men and interest groups to the extent feasible. Governments, in a mixed economy, share some of the habits of thought of the dominant class and doctrines like sovereign functions, which pull out economic enterprises run by them, come in handy. The latent love for club life and charitable devices and escapist institutions bred by clever capitalism and hierarchical social structure, shows up as inhibitions transmuted as doctrines, interpretatively carving out immunities from the 'industrial' demands of labour by labelling many enterprises 'non-industries'. Universities, clubs, institutes, manufactories and establishments managed by eleemosynary or holy entities, are instances. To objectify doctrinally subjective consternation is casuistry.

45. A counter-critic on the other hand, may acidly contend that if judicial interpretation, uninformed by life's realities, were to go wild, every home will be, not a quiet castle but tumultuous industry, every research unit will grind to a halt, every god will face new demands, every service club will be the venue of rumble and every charity choked off by brewing unrest and the salt of the earth as well as the lowliest and the lost will suffer. Counsel for the appellants struck this pessimistic note. Is it not obvious from these rival thoughtways that law is value-loaded, that social philosophy is an inarticulate interpretative tool? This is inescapable in any school of jurisprudence.

46. Now let us itemise, illustratively, the posers springing from the competing submissions, so that the contentions may be concretised.

(1) (*a*) Are establishments, run without profit motive, industries?

(*b*) Are charitable institutions industries?

(*c*) Do undertakings governed by a no-profit-no-loss rule, statutorily or otherwise fastened, fall within the definition in Section *2*(*j*)

(*d*) Do clubs or other organisations (like the Y. M. C. A.) whose general emphasis is not on profit-making but fellowship and self-service, fit into the definitional circle?

(*e*) To go to the core of the matter, is it an inalienable ingredient of 'industry' that it should be plied with a commercial object?

(2) (*a*) Should co-operation between employer and employee be *direct* in so far as it relates to the basic service or essential manufacture which is the output of the undertaking?

(b) Could a lawyer's chambers or chartered accountant's office, a doctor's clinic or other liberal profession's occupation or calling be designated an industry?

(*c*) Would a university or college or school or research institute be called an industry?

(3) (*a*) Is the inclusive part of the definition in Section *2*(*j*) relevant to the determination of an industry? If so, what impact does it make on the categories?

(*b*) Do domestic service drudges who slave without respite — become 'industries' by this extended sense?

(4) Are governmental functions, *stricto sensu,* industrial and if not, what is the extent of the immunity of instrumentalities of government?

(5) What rational criterion exists for a cut-back on the dynamic potential and semantic sweep of the definition, implicit in the industrial law of a progressive society geared to greater industrialisation and consequent concern for regulating relations and investigating disputes between employers and employees as industrial processes and relations become more complex and sophisticated and workmen become more light-conscious?

(6) As the provision now stands, is it scientific to define 'industry' based on the nature - the dominant nature - of the activity, i.e. on the terms of the work, remuneration and conditions of service which bond the two wings together into an employer-employee complex?

47. Back to ***Banerji***, to begin at the very beginning. Technically, this Bench that hears the appeals now is not bound by any of the earlier decisions. But we cannot agree with Justice Roberts of the U. S. Supreme Court that 'adjudications of the Court were rapidly gravitating into the same class as a restricted railroad ticket, good for this day and train only' (See Corwin XVII). The present - even the revolutionary present - does not break wholly with the

past but breaks bread with it, without being swallowed by it and may eventually swallow it. While it is true, academically speaking, that the Court should be ultimately right rather than consistently wrong, the social interest in the certainty of the law is a value which urges continuity where possible, clarification where sufficient and correction where derailment, misdirection or fundamental flaw defeats the statute or creates considerable industrial confusion. Shri M. K. Ramamurthy, encored by Shri R. K. Garg, argued emphatically that after ***Safdarjung***, the law is in trauma and so a fresh look at the problem is ripe. The learned Attorney General and Shri Tarkunde, who argued at effective, illuminating length, as well as Dr Singhvi and Shri A. K. Sen who briefly and tellingly supplemented, did not hide the fact that the law is in Queer Street but sought to discern a golden thread of sound principle which could explain the core of the rulings which peripherally had contradictory thinking. In this situation, it is not wise, in our view, to reject everything ruled till date and fabricate new tests, aimed with lexical wisdom 01 reinforced by vintage judicial thought from Australia. *Banerji* (supra) we take as good, and, anchored on its authority, we will examine later decisions to stabilize the law on the firm principles gatherable therefrom, rejecting erratic excursions. To sip every flower and change every hour is not realism but romance which must not enchant the Court. Indeed, Sri Justice Chandrasekhara Aiyar, speaking for a unanimous Bench, has sketched the guidelines perceptively, if we may say so respectfully. Later cases have only added their glosses, not overruled it and the fertile source of conflict has been the *bashyams* rather than the basic decision. Therefore, our task is not to supplant the ratio of ***Banerji*** but to straighten and strengthen it in its application, away from different deviations and aberrations.

48. ***Banerji****:* The Budge Budge Municipality dismissed two employees whose dispute was sponsored by the Union. The award of the Industrial Tribunal directed re-instatement but the Municipality challenged the award before the High Court and this Court on the fundamental ground that a municipality in discharging its normal duties connected with local self-government is not engaged in any industry as defined in the Act.

49. A panoramic view of the statute and its jurisprudentially hearings has been projected there and the essentials of an industry decocted. The definitions of employer [Section *2*(*g*)], industry [Section 2(j)], industrial dispute [Section 2(k)], workman [Section *2*(*s*)) *are* a statutory dictionary, not popular parlance. It is plain that merely because the employer is a government department or a local body (and, a *fortiori,* a statutory board, society or like entity) the enterprise does not cease to be an 'industry'. Likewise, what the common man does not consider as 'industry' need not necessarily stand excluded from the statutory concept (and *vice versa*). The latter is deliberately drawn wider, and in some respects narrower, as Chandrasekhara Aiyar, J., has emphatically expressed:

> In the ordinary or non-technical sense, according to what is understood by the man in the street, industry or business means an undertaking where capital and labour co-operate with each other for the purpose of producing wealth in the shape of goods, machines, tools etc., and for making profits. The concept of industry in this ordinary sense applies even to agriculture, horticulture, pisciculture and so on and so forth. It is also clear that every aspect of activity in which the relationship of employer and employee exists or arises does not thereby become an industry as commonly understood. We hardly think in terms of an industry, when we have regard, for

> instance, to the rights and duties of *master and servant,* or of *a Government and its secretariat,* or *the members of the medical profession working in a hospital.* It would be regarded as absurd to think so; at any rate the layman unacquainted with advancing legal concepts of what is meant by industry would rule .out such a connotation as impossible. *There is nothing however to prevent a statute from giving the word "industry" and the words "industrial dispute" a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and to bring about in the interests of industrial peace and economy, a fair and satisfactory adjustment of relations between employers and workmen in a variety of fields of activity.* It is obvious that the limited concept of what an industry meant in early times must now yield place to an *enormously wider concept* so as to take in various and varied forms of industry, so that dispute arising in connection with them might be settled quickly without much dislocation and disorganisation of the needs of society and in a manner more adapted to conciliation and settlement than a determination of the respective rights and liabilities according to strict legal procedure and principles. The conflicts between capital and labour have now to be determined more from the standpoint of status than of contract. Without such an approach, the numerous problems that now arise for solution in the shape of industrial disputes cannot be tackled satisfactorily, and this is why every civilised government has thought of the machinery of conciliation officers, Boards and Tribunals for the effective settlement of disputes, (emphasis, added)

50. The dynamics of industrial law, even if incongruous with popular understanding, is this first proposition we derive from ***Banerji****:*

> Legislation had to keep pace with the march of times and to provide for new situations. Social evolution is a process of constant growth, and the State cannot afford to stand still without taking adequate measures by means of legislation to solve large and momentous problems that arise in the industrial field from day to day almost.

51. The second, though trite, guidance that we get is that we should not be beguiled by similar words in dissimilar statutes, contexts, subject-matters or socio-economic situations. The same words may mean one thing in one context and another in a different context. This is the reason why decisions on the meaning of particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statute of our own; they may persuade, but cannot pressure.

52. We would only add that a developing country is anxious to preserve the smooth flow of goods and services, and interdict undue exploitation and, towards those ends, labour legislation is enacted and must receive liberal construction to fulfil its role.

53. Let us get down to the actual amplitude and circumscription of the statutory concept of 'industry'. Not a narrow but an enlarged acceptation is intended. This is supported by several considerations. Chandrasekhara Aiyar, J., observes:

> Do the definitions of 'industry', 'industrial dispute' and 'workman' take in the extended significance, or exclude it? Though the word 'undertaking' in the definition

> of 'industry' is wedged in between business and trade on the one hand and manufacture on the other, and though therefore it might mean only a business or trade undertaking, still it must be remembered that if that were so, there was no need to use the word separately from business or trade. The wider import is attracted even more clearly when we look at the latter part of the definition which refers to "calling, service, employment, or industrial occupation or avocation of workmen". "Undertaking" in the first part of the definition and "industrial occupation or avocation" in the second part obviously mean much more than what is ordinarily understood by trade or business. The definition was apparently intended to include within its scope what might not strictly be called a trade or business venture.

So 'industry' overflows trade and business. Capital, ordinarily assumed to be a component of 'industry', is an expendable item so far as statutory 'industry' is concerned. To reach this conclusion, the Court referred to 'public utility service' [Section 2(n)] and argued: (SCR p. 312)

> A public utility service such as railways, telephones and the supply of power, light or water to the public may be carried on by private companies or business corporations. Even conservancy or sanitation may be so carried on, though after the introduction of local self-government this work has in almost every country been assigned as a duty to local bodies like our Municipalities or District Boards or Local Boards. A dispute in these services between employers and workmen is an industrial dispute, and the proviso to Section 10 lays down that where such a dispute arises and a notice under Section 22 has been given, the appropriate Government shall make a reference under the sub-section. If the public utility service is carried on by a corporation like a Municipality which is the creature of a statute, and which functions under the limitations imposed by the statute, does it cease to be an industry for this reason? The only ground on which one could say that what would amount to the carrying on of an industry if it is done by a private person ceases to be so if the same work is carried on by a local body like a Municipality is that *in the latter there is nothing like the investment of any capital or the existence of a profit earning motive as there generally is in a business. But neither the one nor the other seems a sine quo non or necessary element in the modern conception of industry,* (emphasis, added)

54. Absence of capital does not negative 'industry'. Nay, even charitable services do not necessarily cease to be 'industries' definitionally although popularly charity is not industry. Interestingly, the learned Judge dealt with the point. After enumerating typical municipal activities he concluded: (SCR p. 313)

> Some of these functions may appertain to and partake of the nature of an industry, while others may not. For instance, there is a necessary element of distinction between the supply of power and light to the inhabitants of a Municipality and the running of charitable hospitals and dispensaries for the aid of the poor. In ordinary parlance, the former might be regarded as an industry but not the latter. The very idea underlying the entrustment of such duties or functions to local bodies is not to take them out of the sphere of industry but to secure the substitution of public authorities in the place of private employers and to eliminate the motive of profit-

> making as far as possible. The levy of taxes for the maintenance of the services of sanitation and the conservancy or the supply of light and water is a method adopted and devised to make up for the absence of capital. The undertaking or the service will still remain within the ambit of what we understand by industry though it is carried on with the aid of taxation, and no immediate material gain by way of profit is envisaged, (emphasis, added)

55. The contention that charitable undertakings are not industries is, by this token, untenable.

56. Another argument pertinent to our discussion is the sweep of the expression 'trade'.

57. In short, 'trade' embraces functions of local authorities, even professions, thus departing from popular notions. Another facet of the controversy is next touched upon - i.e. profit-making motive is not a *sine qua non* of 'industry', functionally or definitionally. For this, Powers, J. in ***Federated Municipal and Shire Employees' Union of Australia* v. *Melbourne Corporation*** [26 CLR 508 (Aus.)] was quoted with emphatic approval where the Australian High Court considered an industrial legislation:

> So far as the question in this case is concerned, as the argument proceeded the ground mostly relied upon (after the Councils were held not to be exempt as State instrumentalities) was that the work was not carried on by the municipal corporations for profit in the ordinary sense of the term, although it would generally speaking be carried on by the Councils themselves to save contractors' profits. *If that argument were sufficient, then a philanthropist who acquired a clothing factory and employed the same employees as the previous owner had employed would not be engaged in an occupation about which an industrial dispute could arise, if he distributed the clothes made to the poor free of charge or even if he distributed them to the poor at the bare cost of production.* If the contention of the respondents is correct, a private company carrying on a ferry would be engaged in an industrial occupation. If a municipal corporation carried it on, it would not be industrial. The same argument would apply to baths, bridge-building, quarries, sanitary contracts, gas-making for lighting streets and public halls, municipal building of houses or halls, and many other similar industrial undertakings. Even coal-mining for use on municipal railways or tramways would not be industrial work if the contention of the respondents is correct. If the works in question are carried out by contractors or by private individuals it is said to be industrial, but not industrial within the meaning of the Arbitration Act or Constitution if carried out by municipal corporations. *I cannot accept that view.*" (emphasis added)

58. The negation of profit motive, as a telling test against 'industry', is clear from this quote.

59. All the indicia of 'industry' are packed into the judgment which condenses the conclusion tersely to hold that 'industries' will cover '*branches of work that can be said to be analogous to the carrying out of a trade or business'*. The case, read as a whole, contributes to industrial jurisprudence, with special reference to the Act, a few positive facets and knocks down a few negative fixations. Governments and municipal and statutory bodies may run

enterprises which do not *for that reason* cease to be industries. Charitable activities may also be industries. Undertakings, *sans* profit motive, may well be industries. Professions are not ipso facto out of the pale of industries. Any operation carried on in a manner analogous to trade or business may legitimately be statutory 'industry'. The popular limitations on the concept of industry do not amputate the ambit of legislative generosity in Section *2*(*j*). Industrial peace and the smooth supply to the community are among the aims and objects the Legislature had in view, as also the nature, variety range and areas of disputes between employers and employees. These factors must inform the construction of the provision.

60. The limiting role of ***Banerji*** must also be noticed so that a total view is gained. For instance, 'analogous to trade or business' cuts down 'undertaking', a word of fantastic sweep. Spiritual undertakings, casual undertakings, domestic undertakings, war waging, policing, justicing, legislating, tax collecting and the like are, prima facie, pushed out. Wars are not merchantable, nor justice saleable, nor divine grace marketable. So, the problem shifts to what is "analogous to trade or business". As we proceed to the next set of cases we come upon the connotation of other expressions like 'calling' and get to grips with the specific organisations which call for identification in the several appeals before us.

61. At this stage, a close-up of the content and contours of the controversial words 'analogous etc.', which have consumed considerable time of Counsel, may be taken. To be fair to ***Banerji*****,** the path-finding decision which conditioned and canalised and fertilised subsequent juristic-humanistic ideation, we must show fidelity to the terminological exactitude of the seminal expression used and search carefully for its import. The prescient words are: *branches of work* that can be said to be *analogous to the carrying out of a 'trade or business'.* The same judgment has negatived the necessity for profit-motive and included charity impliedly, has virtually equated private sector and public sector operations and has even perilously hinted at 'professions' being 'trade'. In this perspective, the comprehensive reach of 'analogous' activities must be measured. The similarity stressed relates to 'branches of work'; and more; the analogy will trade or business is in the '*carrying out' of* the economic adventure. So, the parity is in the modus operandi, in the working - not in the purpose of the project nor in the disposal of the proceeds but in the organisation of the venture, including the relations between the two limbs, viz., labour and management. If the mutual relations, the method of employment and the process of co-operation in the *carrying out of the work* bear close resemblance to the organization, method, remuneration, relationship of employer and employee and the like, then it is industry, otherwise not. This is the kernel of the decision. An activity oriented, not motive based, analysis.

62. The landmark Australian case of ***Melbourne Corporation***, which was heavily relied on in ***Banerji*** may engage us. That ruling contains dicta, early in the century, which make India in forensic fabianism, sixty years after in the 'socialist' Republic, blush. The apart, the discussion in the leading judgments dealing with 'industry' from a constitutional angle but relying on statute similar to ours, is instructive. For instance, consider the promptings of profit as a condition of 'industry'; Highness, J. crushes that credo thus:

> The purpose of profit-making can hardly be the criterion. If it were, the labourers who excavated the underground passage for the Duke of Portland's whim, 01 the

> labourers who build (for *pa,)*) a tower of Babel or a Pyramid, could not be parties to an 'industrial dispute.

The worker-oriented perspective is underscored by Isaacs and Rich JJ.: It is at the same time, as is perceived, contended on the part of labour, that matters even indirectly prejudicially affecting the workers are within the sphere of dispute.

64. Now, the cornerstone of industrial law is well laid by ***Banerji***, supported by Lord Mayor of the City of Melbourne.

65 A chronological survey of *post-**Banerji*** decisions of this Court, with accent on the juristic contribution registered by them, may be methodical. Thereafter, cases in alien jurisdictions and derivation of guidelines may be attempted. Even here, we may warn ourselves that the literal latitude of the words in the definition cannot be allowed grotesquely inflationary play but must be read down to accord with the broad industrial sense of the nation's economic community of which Labour is an integral part. To bend beyond credible limits is to break with facts, unless language leaves no option. Forensic inflation of the sense of words shall not lead to an adaptation breakdown outraging the good sense of even radical realists. After all, the Act has been drawn on an industrial canvas to solve the problems of industry, not of chemistry. A functional focus and social control desideratum must be in the mind's eye of the Judge.

66. The two landmark cases, ***The Corporation of the City of Nagpur* v. *Its Employees*** [AIR 1960 SC 675] and ***State of Bombay* v. *The Hospital Mazdoor Sabha*** [AIR 1960 SC 610] may now be analysed in the light of what we have just said. Filling the gaps in the ***Banerji*** decision and the authoritative connotation of the fluid phrase 'analogous to trade and business' were attempted in these twin decisions. To be analogous is to resemble in functions relevant to the subject, as between like features of two apparently different things. So, some kinship through resemblance to trade or business, is the key to the problem, if ***Banerji*** is the guide star. Partial similarity postulates selectivity of characteristics for comparability. Wherein lies the analogy to trade or business, is then the query.

67. Sri Justice Subba Rao, with uninhibited logic, chases this thought and reaches certain tests in ***Nagpur Municipality***, speaking for a unanimous Bench. We respectfully agree with much of his reasoning and proceed to deal with the decision. If the ruling were right, as we think it is, the riddle of 'industry' is resolved in some measure. Although foreign decisions, words and phrases, lexical plenty and definitions from other legislations, were read before us to stress the necessity of *direct* co-operation between employer and employees in the essential product of the undertaking, of the need for the commercial motive, of service to the community etc., as implied inarticulately in the concept of 'industry', we bypass them as but marginally persuasive. The rulings of this Court, the language and scheme of the Act and the well-known canons of construction exert real pressure on our judgment. And, in this latter process, next to ***Banerji*** comes ***Corporation of Nagpur*** which spreads the canvas wide and illumines the expression 'analogous to trade or business', although it comes a few days after ***Hospital Mazdoor Sabha*** decided by the same Bench.

68. To be sure of our approach on a wider basis let us cast a glance at internationally recognised concepts *vis-a-vis* industry. The International Labour Organisation has had

occasion to consider freedom of association for labour as a primary right and collective bargaining followed by strikes, if necessary, as a derivative right. The question has arisen as to whether public servants employed in the crucial functions of the government fall outside the orbit of industrial conflict. Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, in Article 6 states:

> This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

Thus, it is well-recognised that public servants in the key sectors of administration stand out of the industrial sector. The Committee of Experts of the ILO had something to say about the carving out of the public servants from the general category.

69. Incidentally, it may be useful to note certain clear statements made by ILO on the concept of industry, workmen and industrial dispute, not with clear-cut legal precision but with sufficient particularity for general purposes although looked at from a different angle. We quote from ***Freedom of Association,*** Second Edition, 1976, which is a digest of decisions of the Freedom of Association Committee of the Governing Body of the ILO:

> 2. Civil servants and other workers in the employ of the State
>
> (250) Convention 98, and in particular Article 4 thereof concerning the encouragement and promotion of collective bargaining, applies both to the private sector and to nationalised undertakings and public bodies, it being possible to exclude from such application public servants engaged in the administration of the State. (*Report* 141, Case 729, para 15.)
>
> (251) Convention 98, which mainly concerns collective bargaining, permits (Article 6) the exclusion of "public servants engaged in the administration of the State". In this connection, the Committee of Experts on the Application of Conventions and Recommendations has pointed out that, while the concept of public servant may vary to some degree under the various national legal systems, the exclusion from the scope of the Convention of persons employed by the State or in the public sector, who do not act as agents of the public authority (even though they may be granted a status identical with that of public officials engaged in the administration of the State) is contrary to the meaning of the Convention. The distinction to be drawn, according to the Committee, would appear to be basically between civil servants employed in various capacities in government ministries or comparable bodies on the one hand and other persons employed by the government, by public undertakings or by independent public corporations. (*Report* 116, Case 598, para 377; Report 121, Case 635, para 81; *Report* 143, Case 764, para 87).
>
> (254) With regard to a complaint concerning the right of teachers to engage in collective bargaining, the Committees, in the light of the principles contained in Convention 98 draw attention to the desirability of promoting voluntary collective bargaining, according to national conditions, with a view to the regulation of terms and conditions of employment. (Report 110, Case 573, para 194.)

(255) The Committee has pointed out that Convention 98, dealing with the promotion of collective bargaining, covers all public servants who do not act as agents of the public authority, and consequently, among these employers of the postal and tele-communications service. (Report 139, Case 725, para 278.)

(256) Civil aviation technicians working under the jurisdiction of the armed forces cannot be considered, in view of the nature of their activities, as belonging to the armed forces and as such liable to be excluded from the guarantees laid down in Convention 98; the rule contained in Article 4 of the convention concerning collective bargaining should be applied to them. (Report 116, Case 598, paras 375-378.)

70. This divagation was calculated only to emphasise certain fundamentals in international industrial thinking which accord with a wider conceptual acceptation for 'industry'. The wings of the word 'industry' have been spread wide in Section *2*(*j*) and this has been brought out in the decision in ***Corporation of Nagpur***. That case was concerned with a dispute between a municipal body and its employees. The major issue considered there was the meaning of the much disputed expression "analogous to the carrying on of a trade or business". Municipal undertakings are ordinarily industries as ***Baroda Borough Municipality*** [AIR 1957 SC 110] held. Even so the scope of 'industry' was investigated by the Bench in the ***City of Nagpur*** which affirmed ***Banerji*** and ***Baroda***. The Court took the view that the words used in the definition were prima facie of the widest import and declined to curtail the width of meaning by invocation of *noscitur a sociis*. Even so, the Court was disinclined to spread the net too wide by expanding the elastic expressions 'calling', 'service', 'employment' and 'handicraft'. To be over-inclusive may be impractical and so while accepting the enlargement of meaning by the device of inclusive definition the Court cautioned: (SCR p. 952)

> But such a wide meaning appears to over-reach the objects for which the Act was passed. It is, therefore, necessary to limit its scope on permissible grounds, having regard to the aim, scope and the object of the whole Act.

71. After referring to the rule in ***Heydon*** case [(1584) ER 637], Subba Rao, J. proceeded to outline the ambit of industry thus:

> The word 'employers' in clause (*a*) and the word 'employees' in clause (*b*) indicate that the fundamental basis for the application of the definition is the existence of that relationship. The cognate definitions of 'industrial dispute', 'employer', 'employee', also support it. The long title of the Act as well as its preamble shows that the Act was passed to make provision for the promotion of industries and peaceful and amicable settlement of disputes between employers and employees in an organised activity by conciliation and arbitration and for certain other purposes. If the preamble is read with the historical background for the passing of the Act, it is manifest that the Act was introduced as an important step in achieving social justice. The Act seeks to ameliorate the service conditions of the workers, to provide a machinery for resolving their conflicts and to encourage co-operative effort in the service of the community. The history of labour legislation both in England and India also shows that it was aimed more to ameliorate the conditions of service of the labour in organised activities than to anything else. The Act was not intended to

> reach the personal services which do not depend upon the employment of a labour force.

72. Whether the exclusion of personal services is warranted may be examined a little later.

73. 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 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'. Even here we may point out the ineptitude of relying on the doctrine of regal powers. That has reference, in this context, to the Crown's liability in tort and has nothing to do with Industrial Law. In any case, it is open to Parliament to make law which governs the State's relations with its employees. Articles 309 to 311 of the Constitution of India, the enactments dealing with the Defence Forces and other legislation dealing with employment under statutory bodies may, expressly or by necessary implication, exclude the operation of the Industrial Disputes Act, 1947. That is a question of interpretation and statutory exclusion; but, in the absence of such provision of law, it may indubitably be assumed that the key aspects of public administration like public justice stand out of the circle of industry. Even here, as has been brought out from the excerpts of ILO documents, it is not every employee who is excluded but only certain categories primarily engaged and supportively employed in the discharge of the essential functions of constitutional government. In a limited way, this head of exclusion has been recognised throughout.

74. 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. A blanket exclusion of every one of the host of employees engaged by government in departments falling under general, rubrics like, justice, defence, taxation, legislature, may not necessarily be thrown out of the umbrella of the Act. We say no more except to observe that closer exploration, not summary rejection, is necessary.

75. The Court proceeded, in the ***Corporation of Nagpur*** case, to pose for itself the import of the words 'analogous to the carrying out of a trade or business' and took the view that the emphasis was more on 'the nature of the organised activity implicit in trade or business than to equate the other activities with trade or business'. Obviously, non-trade operations were in many cases 'industry'.

77. It is useful to remember that the Court rejected the test attempted *by* Counsel in the case:

> It is said that unless there is a *quid pro quo* for the service it cannot be an industry. This is the same argument, namely, that the service must be in the nature of trade in a different garb.

We agree with this observation and with the further observation that there is no merit in the plea that unless the public who are benefited by the services pay in cash, the services so

rendered cannot be industry. Indeed, the signal service rendered by the ***Corporation of Nagpur*** is to dispel the idea of profit-making.

Monetary considerations for service is, therefore, not an essential characteristic of industry in a modern State.

78. Even according to the traditional concepts of English Law, profit has to be disregarded when ascertaining whether an enterprise is a business:

> **3.** ***Disregard of Profit***.- Profit or the intention to make profit is not an essential part of the legal definition of a trade or business; and payment or profit does not constitute a trade or business that which would not otherwise be such.

79. Does the badge of industrialism, broadly understood, banish, from its fold, education? This question needs fuller consideration, as it has been raised in this batch of appeals and has been answered in favour of employers by this Court in the ***Delhi University*** [AIR 1963 SC 1873] case. But since Subba Rao, J., has supportively cited Isaacs, J. in ***School Teachers' Association*** [(1929) 41 CLR 569 (Aus)], which relates to the same problem, we may, even here, prepare the ground by dilating on the subject with special reference to the Australian case. That learned Judge expressed surprise at the very question:

The basic question raised by this case, strange as it may seem, is whether the occupation of employees engaged in education, itself universally recognised as the key industry to all skilled occupations, is 'industrial' within the meaning of the Constitution.

80. The employers argued that it was fallacious to spin out 'industry' from 'education' and the logic was a specious economic doctrine. Isaacs, J., with unsparing sting and in fighting mood, stated and refuted the plea:

> The theory was that society is industrially organised for the production and distribution of wealth in the sense of tangible, ponderable, corpuscular wealth, and therefore an "industrial dispute" cannot possibly occur except where there is furnished to the public - the consumers - by the combined efforts of employers and employed, wealth of that nature. Consequently, say the employers, "education" not being "wealth" in that sense, there never can be an "industrial dispute" between employers and employed engaged in the avocation of education, regardless of the wealth derived by the employers from the joint co-operation.
>
> The contention sounds like an echo from the dark ages of industry and political economy. It not merely ignores the constant currents of life around us, which is the real danger in deciding questions of this nature, but it also forgets the memorable industrial organization of the nations, not for the production or distribution of material wealth, but for services, national service, as the service of organized industry must always be. Examination of this contention will not only completely dissipate it, but will also serve to throw material light on the question in hand generally. The contention is radically unsound for two great reasons. It erroneously conceives the object of national industrial organization and thereby unduly limits the meaning of the terms "production" and "wealth" when used in that connection. But it further neglects the fundamental character of "industrial disputes" as a distinct and insistent

> phenomenon of modern society. Such disputes are not simply a claim to share the material wealth jointly produced and capable of registration in statistics. At heart they are a struggle, constantly becoming more intense on the part of the employed group engaged in co-operation with the employing group in rendering services to the community essential for a higher general human welfare, to share in that welfare in a greater degree .... That contention, if acceded to, would be revolutionary.... How could it reasonably be said that a comic song or a jazz performance, or the representation of a comedy, or a ride in a tramcar or motor-bus, piloting a ship, lighting a lamp or showing a moving picture is more "material" as wealth than instruction, either cultural or vocational? Indeed, to take one instance, a workman who travels in a tramcar a mile from his home to his factory is no more efficient for his daily task than if he walked ten yards, whereas his technical training has a direct effect in increasing output. If music or acting or personal transportation is admitted to be "industrial" because each is productive of wealth to the employer as his business undertaking, then an educational establishment stands on the same footing. But if education is excluded for the reason advanced, how are we to admit barbers, hair-dressers, taxi-car drivers, furniture removers, and other occupations that readily suggest themselves? And yet the doctrine would admit manufacturers of intoxicants and producers of degrading literature and pictures, because these are considered to be "wealth". The doctrine would concede, for instance, that establishments for the training of performing dogs, or of monkeys simulating human behaviour, would be "industrial", because one would have increased material wealth, that is, a more valuable dog or monkey, in the sense that one could exchange it for more money. If parrots are taught to say "Pretty Polly" and to dance on their perch, that is, by concession, industrial, because it is the production of wealth. But if Australian youths are trained to read and write their language correctly and in other necessary elements of culture and vocation making them more efficient citizens, fitting them with more 01 less directness to take their place in the general industrial ranks of the nation and to render the services required by the community, that training is said not to be wealth and the work done by teachers employed is said not to be industrial.

81. So long as services are part of the wealth of a nation - and it is obscurantist to object to it - educational services are wealth, are 'industrial'. We agree with Isaacs, J.

82. More closely analysed, we may ask ourselves, as Isaacs, J. did, whether, if private scholastic establishments carried on teaching on the same lines as the State schools, giving elementary education free, and charging fees for the higher subjects, providing the same curriculum and so on, by means of employed teachers, would such a dispute as we have here be an industrial dispute?.... "I have already indicated my view", says Isaacs, J. "that education so provided constitutes in itself an independent industrial operation as a service rendered to the community". Charles Dickens evidently thought so when ninety years ago Squeers called his school "the shop" and prided himself on Nickleby's being "cheap" at £ 5 a year and commensurate living conditions. The world has not turned back since then. In 1926 the Committee on Industry and Trade, in their report to the British Prime Minister, included among "Trade Unions" those called "teaching". It there appears that in 1897 there were six

unions with a total membership of 45,319, and in 1924 there were seventeen unions with a membership of 1,94,946. The true position of education in relation to the actively operative trades is not really doubtful. Education, cultural and vocational, is now and is daily becoming as much the artisan's capital and tool, and to a great extent his safeguard against unemployment, as the employers' banking credit and insurance policy are part of his means to carry on the business. There is at least as much reason for including the educational establishments in the constitutional power as "labour" services, as there is to include insurance companies as "capital" services.

83. We have extensively excerpted from the vigorous dissent because the same position holds good for India which is emerging from feudal illiteracy to industrial education. In Gandhi's India basic education and handicraft merge and in the latter half of our century higher education involves field studies, factory training, house-surgeoncy and clinical education; and, *sans* such technological training and education in humanities, industrial progress is self-condemned. If education and training are integral to industrial and agricultural activities, such services are part of industry even if highbrowism may be unhappy to acknowledge it. It is a class-conscious, inegalitarian outlook with an elitist aloofness which makes some people shrink from accepting educational institutions, vocational or other, as industries. The definition is wide, embraces training for industry which, in turn ensconces all processes of producing goods and services by employer-employee co-operation. Education is the nidus of industrialization and itself is industry.

84. We may consider certain aspects of this issue while dealing with later cases of our Court. Suffice it to say, the unmanning argument of Isaacs, J. has been specifically approved in ***Corporation of Nagpur*** and ***Hospital Mazdoor Sabha*** in a different aspect.

85. Now we revert to the more crucial part of ***Corporation of Nagpur***. It is meaningful to notice that in that case, the Court, in its incisive analysis, department by department of variform municipal services, specifically observed:

> *Education Department:* This department looks after the primary education, i.e., compulsory primary education within the limits of the Corporation. (See the evidence of witness 1 for party 1). This service can equally be done by private persons. This department satisfies the other tests. The employees of this department coming under the definition of "employees" under the Act would certainly be entitled to the benefits of the Act.

86. The substantial break-through achieved by this decision in laying bare the fundamentals of 'industry' in its wider sense deserves mention. The ruling tests are clear. The 'analogous' species of quasi-trade qualify for becoming 'industry' *if the nature of the organized activity implicit in a trade or business* is shared by them. (See p. 960, the entire organisational activity). It is not necessary to '*equate* the other activities with trade or business'. The pith and substance of the matter is that the structural, organisational, engineering aspect, the crucial industrial relations like wages, leave and other service conditions as well as characteristic business methods (not motives) in running the enterprise, govern the conclusion. Presence of profit motive is expressly negated as a criterion. Even the *quid pro quo* theory - which is the same monetary object in a milder version - has been

dismissed. The subtle distinction, drawn in lovely lines and pressed with emphatic effect by Sri Tarkunde, between gain and profit, between no-profit no-loss basis having different results in the private and public sectors, is fascinating but, in the rough and tumble, and sound and fury of industrial life, such nuances break down and nice refinements defeat. For the same reason, we are disinclined to chase the differential ambits of the first and the second parts of Section *2*(*j*). Both read together and each viewed from the angle of employer or employee and applied in its sphere, as the learned Attorney General pointed out, will make sense. If the *nature of* the activity is para-trade or quasi-business, it is of no moment that it is undertaken in the private sector, joint sector, public sector, philanthropic sector or labour sector; it is 'industry'. It is the human sector, the way the employer-employee relations are set up and processed that gives rise to claims, demands, tensions, adjudications, settlements, truce and peace in industry. That is the *raison d'etre* of industrial law itself.

87. Two seminal guidelines of great moment flow from this decision: (1) the primary and predominant activity test; and (2) the integrated activity test. The concrete application of these two-fold tests is illustrated in the very case. We may set out in the concise words of Subba Rao, J., the sum-up: (SCR p. 961)

> The result of the discussion may be summarized thus: (1) The definition of "industry" in the Act is very comprehensive. It is in two parts: one part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act. (2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered- by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharged many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purpose of the Act.

88. By these tokens, which find assent from us, the tax department of the local body is 'industry'. The reason is this:

> The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of "industry", it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services

rendered by the municipality come under the definition of "industry", we should hold that the employees of the tax department are also entitled to the benefits under the Act.

89. The health department of the municipality too is held in that case to be 'industry' - a fact which is pertinent when we deal later with hospitals, dispensaries and health centres:

This department looks after scavenging, sanitation, control of epidemics, control of food adulteration and *running of public dispensaries.* Private institutions can also render these services. It is said that the control of food adulteration and the control of epidemics cannot be done by private individuals and institutions. We do not see why. There can be private medical units to help in the control of epidemics for remuneration. Individuals may get the food articles purchased by them examined by the medical unit and take necessary action against guilty merchants. So too, they can take advantage of such a unit to prevent epidemics by having necessary inoculations and advice. This department also satisfies the other tests laid down by us, and is an industry within the meaning of the definition of "industry" in the Act.

90. Even the General Administration Department is 'industry'. Why?

Every big company with different sections will have a general administration department. If the various departments collated with the department are industries, this department would also be a part of the industry. Indeed the efficient rendering of all the services would depend upon the proper working of this department, for, otherwise there would be confusion and chaos. The State Industrial Court in this case has held that all except five of the departments of the Corporation come under the definition of "industry" and if so, it follows that this department, dealing predominantly with industrial departments, is also an industry. Hence the employees of this department are also entitled to the benefits of this Act.

91. Running right through are three tests: (*a*) the paramount and predominant duty criterion (p. 971); (*b*) the specific service being an integral, non-severable part of the same activity (p. 960) and (*c*) the irrelevance of the statutory duty aspect.

It is said that the functions of this department are statutory and no private individual can discharge those statutory functions. The question is not whether the discharge of certain functions by the Corporation have *statutory backing,* but whether those functions can equally be performed by private individuals. The provisions of the Corporation Act and the by-laws prescribe certain specifications for submission of plans and for the sanction of the authorities concerned before the building is put up. The same thing can be done by a co-operative society or a private individual. *Co-operative societies* and private individuals can allot lands for building houses in accordance with the conditions prescribed by law in this regard. The services of this department are therefore analogous to those of a private individual with the difference that one has the statutory sanction b-'hind it and the other is governed by terms of contracts.

Be it noted that even co-operatives are covered by the learned Judge although we may deal with that matter a little later.

92. The same Bench decided both ***Corporation of Nagpur*** and ***Hospital Mazdoor Sabha*** . This latter case may be briefly considered now. It repeals the profit motive and *quid pro quo* theory as having any bearing on the question. The wider import of Section 2(/) is accepted but it expels essential 'sovereign activities' from its scope.

93. It is necessary to note that the hospital concerned in that case was run by Government for medical relief to the people. Nay more. It had a substantial educational and training role.

94. A conspectus of the clauses has induced Gajendragadkar, J. to take note of the impact of provisions regarding public utility service also:

> If the object and scope of the statute are considered there would be no difficulty in holding that the relevant words of wide import have been deliberately used by the Legislature in defining "industry" in Section *2*(*j*). The object of the Act was to make provision for the investigation and settlement of industrial disputes, and the extent and scope of its provisions would be realised if we bear in mind the definition of "industrial dispute" given by Section *2*(*k*), of "wages" by Section 2(*rr*), "workman" by Section *2*(*s*), and of "employer" by Section *2*(*g*). Besides, the definition of a public utility service prescribed by Section *2*(*n*) is very significant. One has merely to glance at the six categories of public utility service mentioned by Section *2*(*n*) to realise that the rule of construction on which the appellant relies is inapplicable in interpreting the definition prescribed by Section *2*(*j*).

The positive delineation of 'industry' is set in these terms:

> (A)s a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organised or arranged, the condition of the co-operation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section *2*(*j*) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of hospitals in question.

Again,

> It is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j); who conducts the activity and whether it is conducted for profit or not do not make a material difference.

By these tests even a *free* or charitable hospital is an industry. That the Court intended such a conclusion is evident:

> If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under Section *2*(*j*). Thus the character of the activity involved in running a hospital brings the institution of the hospital within Section *2*(*j*).

95. The 'rub with the ruling', if we may with great deference say so, begins when the Court inhibits itself from effectuating the logical thrust of its own crucial ratio: (SCR p. 876)

> (T)hough Section *2*(*j*) uses words of very wide denotation, *a line would have to be drawn in a fair and just manner* so as to exclude some callings, services or undertakings. If all' the words used are given their widest meaning, all services and all callings would come within the purview of the definition; even service rendered by a servant purely in a personal or domestic matter or even in a casual way would fall within the definition. It is not and cannot be suggested that in its wide sweep the word "service" is intended to include service howsoever rendered in whatsoever capacity and for whatsoever reason. We must, therefore, consider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in Section *2*(*j*)*;* and that no doubt is a somewhat difficult problem to decide.

What is a 'fair and just manner'? It must be founded on grounds justifiable by principle derived from the statute if it is not to be sublimation of subjective phobia, rationalization of interests or judicialisation of non-juristic negatives. And this hunch, in our respectful view, has been proved true not by positive pronouncement in the case but by two points suggested but left open. One relates to education and the other to professions. We will deal with them in due course.

Liberal Professions

96. When the delimiting line is drawn to whittle down a wide definition, a principled working test, not a projected wishful thought, should be sought. This conflict surfaced in the ***Solicitors*** [AIR 1962 SC 1080] case. Before us too, a focal point of contest was as to whether the liberal professions are *ipso facto,* excluded from 'industry'. Two grounds were given by Gajendragadkar, J. for overruling Sri A. S. R. Chari's submissions. The doctrine of *direct* co-operation and the features of liberal professions were given as good reasons to barricade professional enterprises from the militant clamour for more by lay labour. The learned Judge expressed himself on the first salvational plea:

> When in the *Hospital* case this Court referred to the organisation of the undertaking involving the co-operation of capital and labour or the employer and his employees, it obviously meant *the co-operation essential and necessary/or the purpose of rendering material service or for the purpose of production.* It would be realised that the concept of industry postulates partnership between capital and labour or between the employer and his employees. It is under this partnership that the employer contributes his capital and the employees their labour and the joint contribution of capital and labour leads directly to the production which the industry has in view. In other words, the co-operation between capital and labour or between the employer and his employees which is treated as a working test in determining

whether any activity amounts to an industry, is the co-operation which is directly involved in the production of goods or in the rendering of service. It cannot be suggested that every form or aspect of human activity in which capital and labour co-operate or employer and employees assist each other is an industry. The distinguishing feature of an industry is that for the production of goods or for the rendering of service, *co-operation between capital and labour or between the employer and his employees must be direct and must be essential....* Co-operation to which the test refers must be co-operation between the employer and his employees which is essential for carrying out the purpose of the enterprise and the service to be rendered by the enterprise should be the *direct outcome of the combined efforts of* the employer and the employees.

97. The second reason for exoneration is qualitative.

Looking at this question in a broad and general way, it is not easy to conceive that a liberal profession like that of an attorney could have been intended by the Legislature to fall within the definition of "industry" under Section *2*(*j*). The very concept of the liberal professions has its own special and distinctive features which do not readily permit the inclusion of the liberal professions into the four corners of industrial law. The essential basis of an industrial dispute is that it is a dispute arising between capital and labour in enterprises where capital and labour combine to produce commodities or to render service. This essential basis would be absent in the case of liberal professions. A person following a liberal profession does not carry on his profession in any intelligible sense with the active co-operation of his employees and the principal, if not the sole, capital which he brings into his profession is his special or peculiar intellectual and educational equipment. That is why on broad and general considerations which cannot be ignored, a liberal profession like that of an attorney must, we think, be deemed to be outside the definition of "industry" under Section 2(j).

98. Let us examine these two tests. In the sophisticated, subtle, complex, assembly-line operations of modern enterprises, the test of 'direct' and 'indirect', 'essential' and 'inessential', will snap easily. In an American automobile manufactory, everything from shipping iron ore into and shipping cars out of the vast complex takes place with myriad major and minor jobs. A million administrative, marketing and advertising tasks are done. Which, out of this maze of chores, is direct? A battle may be lost if winter wear were shoddy. Is the army tailor a direct contributory?

99. An engineer may lose a competitive contract if his typist typed wrongly or shabbily or despatched late. He is a direct contributory to the disaster. No lawyer or doctor can impress client or court if his public relations job or home work were poorly done, and that part depends on smaller men, adjuncts. Can the great talents in administration, profession, science or art shine if a secretary fades or faults? The whole theory of direct co-operation is an improvisation which, with great respect, hardly impresses.

100. Indeed, Hidayatullah, C.J., in ***Gymkhana Club Employees' Union*** [AIR 1968 SC 554] scouted the argument about direct nexus, making specific reference to the ***Solicitors'*** case:

> (T)he service of a solicitor was regarded as individual depending upon his personal qualifications and ability, to which the employees did not contribute directly or essentially. Their contribution, it was held, had no direct or essential nexus with the advice or services. In this way learned professions were excluded.

To nail this essential nexus theory, Hidayatullah, C.J., argued:

> What partnership can exist between the company and/or Board of Directors on the one hand and the menial staff employed to sweep floors on the other? What direct and essential nexus is there between such employees and production? This proves that what must be established is the existence of an industry viewed from the angle of what the employer is doing and if the definition from the angle of the employer's occupation is satisfied, all who render service and fall within the definition of workman come within the fold of industry irrespective of what they do. There is then no need to establish a partnership as such in the production of material goods or material services. Each person doing his appointed task in an organisation will be a part of the industry whether he attends to a loom or merely polishes door handles. The fact of employment as envisaged in the second part is enough provided there is an industry and the employee is a workman. The learned professions are not industry not because there is absence of such partnership but because viewed from the angle of the employer's occupation, they do not satisfy the test.

101. Although Gajendragadkar, J. in *Solicitors'* case (supra) and Hidayatullah, J. in ***Gymkhana*** case agreed that the learned professions must be excluded, on the question of direct or effective contribution in partnership, they flatly contradicted each other. The reasoning on this part of the case which has been articulated in the ***Gymkhana Club Employees' Union*** appeals to us. There is no need for insistence upon the principle of partnership, the doctrine of direct nexus or the contribution of values by employees. Every employee in a professional office, be he a para-legal assistant or full-fledged professional employee or, down the ladder, a mere sweeper or janitor, every one makes for the success of the office, even the *mali* who collects flowers and places a beautiful bunch in a vase on the table spreading fragrance and pleasantness around. The failure of anyone can mar even the success of everyone else. Efficient collectivity is the essence of professional success. We reject the plea that a member of a learned 01 liberal profession, for that sole reason, can self-exclude himself from operation of the Act.

102. The professional immunity from labour's demand for social justice because learned professions have a halo also stands on sandy foundation and, perhaps, validates G. B. Shaw's witticism that all professions are conspiracies against the laity. After all, let us be realistic and recognise that we live in an age of experts alias professionals, each having his ethic, monopoly, prestige, power and profit. Proliferation of professions is a ubiquitous phenomenon and none but the tradition-bound will, agree that theirs is not a liberal

profession. Lawyers have their code. So too medics swearing by Hippocrates, chartered accountants and company secretaries and other autonomous nidi of know-how.

108. All this adds up to the decanonisation of the noble professions. Assuming that a professional in our egalitarian ethos, is like any other man of common clay plying a trade or business, we cannot assent to the cult of the elite in carving out islands of exception to 'industry'.

109. The more serious argument of exclusion urged to keep the professions out of the coils of industrial disputes and the employees' demands backed by agitations 'red in tooth and claw' is a sublimated version of the same argument. Professional expertise and excellence, with its occupational autonomy, ideology, learning, bearing and morality, holds aloft a standard of service which centres round the individual doctor, lawyer, teacher or auditor. This reputation and quality of special service being of the essence, the co-operation of the workmen in this core activity of professional offices is absent. The clerks and stenos, the bell boys and doormen, the sweepers and menials have no art or part in the soul of professional functions with its higher code of ethic and intellectual proficiency, their contribution being peripheral and low-grade, with no relevance to the clients' wants and requirements. This conventional model is open to the sociological criticism that it is an ideological cloak conjured up by highborns, a posture of *noblesse oblige* which is incongruous with raw life, especially in the democratic third world and post-industrial societies. To hug the past is to materialize the ghost. The paradigms of professionalism are gone. In the large solicitors' firms, architects' offices, medical polyclinics and surgeries, we find a humming industry, each section doing its work with its special flavour and culture and code, and making the end product worth its price. In a regular factory you have highly skilled technicians whose talent is of the essence, managers whose ability organizes and workmen whose coordinated input is, from one angle, secondary, from another, significant. Let us look at a surgery or walk into a realtor's firm. What physician or surgeon will not kill if an attendant errs or clerk enters wrong or dispenses deadly dose? One such disaster somewhere in the assembly-line operations and the clientele will be scared despite the doctor's distilled skill. The lawyer is no better and just cannot function without the specialised supportive tools of para-professionals like secretaries, librarians and law-knowing steno-typists or even the messengers and telephone girls. The mystique of professionalism easily melts in the hands of modern social scientists who have (as Watergate has shown in America and has India had its counterparts?) debunked and stripped the professional emperor naked. 'Altruism' has been exposed, cash has overcome craft nexus and if professionalism is a mundane ideology, then "profession" and "professional" are sociological contributions to the pile. Anyway, in the sophisticated organization of expert services, all occupations have central skills, an occupational code of ethics, a group culture, some occupational authority, and some permission to monopoly practice from the community. This incisive approach makes it difficult to 'caste-ify' or 'class-ify' the liberal professions as part and beyond the pale of 'industry' in our democracy. We mean no disrespect to the members of the professions. Even the judicial profession or administrative profession cannot escape the winds of social change. We may add that the modem world, particularly the third world, can hope for a human tomorrow only through professions for the people, through expertise at the service of the millions. Indian primitivism

can be banished only by *pro bono publico* professions in the field of law, medicine, education, engineering and what not. But that radicalism does not detract from the thesis that 'industry' does not spare professionals. Even so, the widest import may still self-exclude the little mofussil lawyer, the small rural medic or the country engineer, even though a hired sweeper or factotum assistant may work with him. We see no rationale in the claim to carve out islets. Look. A solicitor's firm or a lawyer's firm becomes successful not merely by the talent of a single lawyer but by the co-operative operations of several specialists, juniors and seniors. Likewise the ancillary services of competent stenographers, paralegal supportive services are equally important. The same test applies to other professions. The conclusion is inevitable that contribution to the success of the institution - every professional unit has an institutional goodwill and reputation - comes not merely from the professional or specialist but from all those whose excellence in their respective parts makes for the total proficiency. We have, therefore, no doubt that the claim for exclusion on the score of liberal professions is unwarranted from a functional or definitional angle. The flood-gates of exemption from the obligations under the Act will be opened if professions flow out of its scope.

110. Many callings may clamour to be regarded as liberal professions. In an age when traditions have broken down and the old would professions of liberal descent have begun to resort to commercial practices (even legally, as in America, or factually, as in some other countries) exclusion under this new label will be infliction of injury on the statutory intent and effect.

111. The result of this discussion is that the ***Solicitors'*** case is wrongly decided and must, therefore, be overruled. We must hasten, however, to repeat that a small category, perhaps large in numbers in the mofussil, may not squarely fall within the definition of industry. A single lawyer, a rural medical practitioner or urban doctor with a little assistant and/of menial servant may ply a profession but may not be said to run an industry. That is not because the employee does not make a contribution nor because the profession is too high to be classified as a trade or industry with its commercial connotations but because there is nothing like *organised labour* in such employment. The image of industry or even quasi-industry is one of a plurality of workmen, not an isolated 01 single little assistant or attendant. The latter category is more or less like personal avocation for livelihood taking some paid or part-time from another. The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and regulation of industrial relations and not to meddle with every little carpenter in a village or bla ksmith in a town who sits with his son or assistant to work for the customers who trek in. The ordinary spectacle of a cobbler and his assistant or a cycle repairer with a helper, we come across in the pavements of cities and towns, repels the idea of industry and industrial dispute. For this reason, which applies all along the line, to small professions, petty handicraftsmen, domestic servants and the like, the solicitor or doctor or rural engineer, even like the butcher, the baker and the candle-stick maker, with an assistant or without, does not fall within the definition of industry. In regular industries, of course, even a few employees are enough to bring them within Section 2(7). Otherwise automated industries will slip through the net.

Education

112. We will now move on to a consideration of education as an industry. If the triple tests of systematic activity, co-operation between employer and employee and production of goods and services were alone to be applied, a University, a college, a research institute or teaching institution will be an industry. But in ***University of Delhi*** [AIR 1963 SC 1873] it was held that the Industrial Tribunal was wrong in regarding the University as an industry because it would be inappropriate to describe education as an industrial activity. Gajendragadkar, J. agreed in his judgment that the employer-employee test was satisfied and co-operation between the two was also present. Undoubtedly, education is a sublime cultural service, technological training and personality-builder. A man without- education is a brute and nobody can quarrel with the proposition that education, in its spectrum, is significant service to the community. We have already given extracts from Australian Judge Isaacs, J. to substantiate the thesis that education is not merely industry but the mother of industries. A philistinic, illiterate society will be not merely uncivilised but incapable of industrialisation. Nevertheless Gajendragadkar, J. observed:

> It would, no doubt, sound somewhat strange that education should be described as industry and the teachers as workmen within the meaning of the Act, but if the literal construction for which the respondents contend is accepted, that consequence must follow.

Why is it strange to regard education as an industry? Its respectability? Its lofty character? Its professional stamp? Its cloistered virtue which cannot be spoiled by the commercial implications and the raucous voices of workmen? Two reasons are given to avoid the conclusion that imparting education is an industry. The first ground relied on by the Court is based upon the preliminary conclusion that teachers are not 'workmen' by definition. Perhaps, they are not, because teachers do not do manual work or technical work. We are not too sure whether it is proper to disregard, with contempt, manual work and separate it from education, nor are we too sure whether in our technological universe, education has to be excluded. However, that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present. The Court, in the ***University of Delhi***, proceeded on that assumption viz. that teachers are not workmen, which we will adopt to test the validity of the argument. The reasoning of the Court is best expressed in the words of Gajendragadkar, J.:

> It is common ground that teachers employed by educational institutions, whether the said institutions are imparting primary, secondary, collegiate or post-graduate education, are not workmen under Section *2*(*s*)*,* and so, it follows that the whole body of employees with whose co-operation the work of imparting education is carried on by educational institutions do not fall within the purview of Section *2*(*s*)*,* and any disputes between them and the institutions which employed them are outside the scope of the Act. In other words, if imparting education is an industry under Section 2(j), the bulk of the employees being outside the purview of the Act, the only disputes which can fall within the scope of the Act are those which arise between such institutions and their subordinate staff, the members of which may fall under Section 2(s). In our opinion, having regard to the fact that the work of education is

primarily and exclusively carried on with the assistance of the labour and co-operation of teachers, the omission of the whole class of teachers from the definition prescribed by Section *2*(*s*) has an important bearing and significance in relation to the problem which we are considering. It could not have been the policy of the Act that education should be treated as industry for the benefit of a very minor and insignificant number of persons who may be employed by educational institutions to carry on the duties of the subordinate staff. Reading Section *2*(*g*), (*j*) and (*s*) together, we are inclined to hold that the work of education carried on by educational institutions like the University of Delhi is not an industry within the meaning of the Act.

113. The second argument which appealed to the Court to reach its conclusion is that: "the distinctive purpose and 'object of education would make it very difficult to assimilate it to the position of any trade, business or calling or service within the meaning of Section *2*(*j*)*"*. Why so? The answer is given by the learned Judge himself:

Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development. To speak of this educational process in terms of industry sounds so completely incongruous that one is not surprised that the Act has deliberately so defined workman under Section *2*(*s*) as to exclude teachers from its scope. Under the sense of values recognised both by the traditional .and conservative as well as the modern and progressive social outlook, teaching and teachers are, no doubt, assigned a high place of honour and it is obviously necessary and desirable that teaching and teachers should receive the respect that is due to them. A proper sense of values would naturally hold teaching and teachers in high esteem, though power or wealth may not be associated with them. It cannot be denied that the concept of social justice is wide enough to include teaching and teachers, and the requirement that teachers should receive proper emoluments and other amenities which is essentially based on social justice cannot be disputed; but the effect of excluding teachers from Section *2*(*s*) is only this that the remedy available for the betterment of their financial prospects does not fall under the Act. It is well-known that Education Departments of the State Governments as well as the Union Government, and the University Grants Commission carefully consider this problem and assist the teachers by requiring the payment to them of proper scales of pay and by insisting on the fixation of other reasonable terms and conditions of service in regard to teachers engaged in primary and secondary education and collegiate education which fall under their respective jurisdictions. The position nevertheless is clear that any problems connected with teachers and their salaries are outside the purview of the Act, and since the teachers form the sole class of employees with whose co-operation education is imparted by educational institutions, their exclusion from the purview of the Act necessarily corroborates the conclusion that education itself is not without its scope.

114. Another reason has also been adduced to reinforce this conclusion:

It is well-known that the University of Delhi and most other educational institutions are not formed or conducted for making profit; no doubt, the absence of

> profit motive would not take the work of any institution outside Section *2*(*j*) if the requirements of the said definition are otherwise satisfied. We have referred to the absence of profit motive only to emphasise the fact that the work undertaken by such educational institutions differs from the normal concept of trade or business. Indeed, from a rational point of view, it would be regarded as inappropriate to describe education even as a profession. Education in its true aspect is more a mission and a vocation rather than a profession or trade or business, however wide may be the denotation of the two latter words under the Act. That is why we think it would be unreasonable to hold that educational institutions are employers within the meaning of Section *2(g*)*,* or that the work of teaching carried on by them is an industry under Section *2*(*j*)*,* because essentially, the creation of a well-educated healthy young generation imbued with a rational progressive outlook on life which is the sole aim of education, cannot at all be compared or assimilated with what may be described as an industrial process.

115. The Court was confronted by the ***Corporation of Nagpur*** where it had been expressly held that the education department of the Corporation was service rendered by the department and so the subordinate menial employees of the department came under the definition of employees and would be entitled to the benefits of the Act. This was explained away by the suggestion that

> (T)he question as to whether educational work carried on by educational institutions like the University of Delhi which have been formed primarily and solely for the purpose of imparting education amounts to an industry within the meaning of Section 2(j), was not argued before the Court and was not really raised in that form.

116. We dissent, with utmost deference, from these propositions and are inclined to hold, as the ***Corporation of Nagpur*** held, that *education* is *industry,* and as Isaacs, J. held, in the ***Australian*** case, that education is pre-eminently service.

117. The actual decision in ***University of Delhi*** was supported by another ground, namely, that the predominant activity of the University was teaching and since teachers did not come within the purview of the Act, only the incidental activity of the subordinate staff could fall within its scope but that could not alter the predominant character of the institution.

118. We may deal with these contentions in a brief way, since the substantial grounds on which we reject the reasoning have already been set out elaborately. The premises relied on is that the bulk of the employees in the University is the teaching community. Teachers are not workmen and cannot raise disputes under the Act. The subordinate staff being only a minor category of insignificant numbers, the institution must be excluded, going by the predominant character test. It is one thing to say that an institution is not an industry. It is altogether another thing to say that a large number of its employees are not 'workmen' and cannot therefore avail of the benefits of the Act and so the institution ceases to be an industry. The test is not the predominant number of employees entitled to enjoy the benefits of the Act. The true test is the predominant nature of the activity. In the case of the university or an educational institution, the *nature* of the activity is, *ex hypothesi,* education which is a service to the community. Ergo, the university is an industry. The error has crept in, if we may say so

with great respect, in mixing up the numerical strength of the personnel with the nature of the activity.

119. Secondly, there are a number of other activities of the University Administration, demonstrably industrial which are severable although ancillary to the main cultural enterprise. For instance, a university may have a large printing press as a separate but considerable establishment. It may have a large fleet of transport buses with an army of running staff. It may have a tremendous administrative strength of officers and clerical cadres. It may have *karamcharis* of various hues. As the ***Corporation of Nagpur*** has effectively ruled, these operations, viewed in severally or collectively, may be treated as industry. It would be strange, indeed, if a university has 50 transport buses, hiring drivers, conductors, cleaners and workshop technicians. How are they to be denied the benefits of the Act, especially when their work is separable from academic teaching, merely because the buses are owned by the same corporate personality? We find, with all defence, little force in this process of nullification of the industrial character of the University's multi-form operations.

120. The next argument which has appealed to the Court in that case is that education develops the personality of the pupil and this process, if described as industry, sounds grotesque. We are unable to appreciate the force of this reasoning, if we may respectfully say so. It is true that our societal values assign a high place of honour to education, but how does it follow from this that education is not a service? The *sequitur* is not easily discernible. The pejorative assumption seems to be that 'industry' is something vulgar, inferior. disparaging and should not be allowed to sully the sanctified subject of education. In our view, industry is a noble term and embraces even the most sublime activity. At any rate, in legal terminology located in the statutory definition it is not money-making, it is not lucre-loving, it is not commercialising, it is not profit hunger. On the other hand, a team of painters who produce works of art and sell them or an orchestra group which travels and performs and makes money may be an industry if they employ supportive staff of artistes or others. There is no degrading touch about 'industry', especially in the light of Mahatma Gandhi's dictum that 'Work is Worship'. Indeed the colonial system of education, which divorced book learning from manual work and practical training, has been responsible for the calamities in that field. For that very reason, Gandhiji and Dr Zakir Hussain propagated basic education which used work as *modus operandus* for teaching. We have hardly any hesitation in regarding education as an industry.

121. The final ground accepted by the Court is that education is a mission and vocation, rather than a profession or trade or business. The most that one can say is that this is an assertion which does not prove itself. Indeed, all life is a mission and a man without a mission is spiritually still-born. The high mission of life is the manifestation of the divinity already in man. To christen education as a mission, even if true, is not to negate its being an industry. We have to look at educational activity from the angle of the Act, and so viewed the ingredients of education are fulfilled. Education is, therefore, an industry and nothing can stand in the way of that conclusion.

122. It may well be said by realists in the cultural field that educational managements depend so much on governmental support and some of them charge such high fees that schools have become trade and managers merchants. Whether this will apply to universities or

not, schools and colleges have been accused, at least in the private sector, of being tarnished with trade motives.

123. Let us trade romantics for realities and see. With evening classes, correspondence courses, admissions unlimited, fees and government grants escalating, and certificates and degrees for prices, education - legal, medical, technological, school level or collegiate-education - is riskless trade for cultural entrepreneurs and hapless nests of campus (industrial) unrest. Imaginary assumptions are experiments with untruth.

124. Our conclusion is that the ***University of Delhi*** case was wrongly decided and that education can be and is, in its institutional form, an industry.

Are charitable institutions industries?

125. Can charity be 'industry'? This paradox can be unlocked only by examining the nature of the activity of the charity, for there are charities and charities. The grammar of labour law in a pluralist society tells us that the worker is concerned with wages and conditions of service, the employer with output and economies and the community with peace, production and stream of supply. This complex of work, wealth and happiness, firmly grasped, will dissolve the dilemma of the law bearing on charitable enterprises. Charity is free: industry is business. Then how? A lay look may scare; a legal look will see; a social look will see through a hiatus inevitable in a sophisticated society with organizational diversity and motivational dexterity.

125-A. If we mull over the major decisions, we get a hang of the basic structure of 'industry' in its legal anatomy. Bedrocked on the grundnorms, we must analyse the elements of charitable economic enterprises, established and maintained for satisfying human wants. Easily, three broad categories emerge; more may exist. The charitable element enlivens the operations at different levels in these patterns and the legal consequences are different, viewed from the angle of 'industry'. For income-tax purposes, Trusts Act or company law or registration law or penal code requirements the examination will be different. We are concerned with a benignant disposition towards workmen and a trichotomy of charitable enterprises run for producing and/or supplying goods and services, organized systematically and employing workmen, is scientific.

126. The first is one where the enterprise, like any other, yields profits but they are siphoned off for altruistic objects. The second is one where the institution makes no profit but hires the services of employees as in other like businesses but the goods and services, which are the output, are made available, at low or no cost, to the indigent needy who are priced out of the market. The third is where the establishment is oriented on a humane mission fulfilled by men who work, not because they are paid wages, but because they share the passion for the cause and derive job satisfaction from their contribution. The first two are industries, the third not. What is the test of identity whereby these institutions with eleemosynary inspiration fall or do not fall under the definition of industry?

127. All industries are organized, systematic activity. Charitable adventures which do not possess this feature, of course, are not industries. Sporadic or fugitive strokes of charity do not become industries. All three philanthropic entities, we have itemised, fall for consideration only if they involve co-operation between employers and employees to produce

and/or supply goods and/or services. We assume, all three do. The crucial difference is over the presence of charity in the quasi-business nature of the activity. Shri Tarkunde, based on ***Safdarjung*****,** submits that, *ex hypothesi,* charity frustrates commerciality and thereby deprives it of the character of industry.

128. It is common ground that the first category of charities is disqualified for exemption. If a business is run for production and or supply of goods and services with an eye on profit, it is plainly an industry. The fact that the whole or substantial part of the profits so earned is diverted for purely charitable purposes does not affect the nature of the economic activity which involves the co-operation of employer and employee and results in the production of goods and services. The workers are not concerned about the destination of the profits. They work and receive wages. They are treated like any other workmen in any like industry. All the features of an industry, as spelt out from the definition by the decisions of this Court, are fully present in these charitable businesses. In short, they are industries. The application of the income for philanthropic purposes, instead of filling private coffers, makes no difference either to the employees or to the character of the activities. Good Samaritans can be clever industrialists.

129. The second species of charity is really an allotropic modification of the first. If a kind-hearted businessman or high-minded industrialist or service-minded operator hires employees like his non-philanthropic counterparts and, in co-operation with them, produces and supplies goods or services to the lowly and the lost, the needy and the ailing without charging them any price or receiving a negligible return, people regard him as of charitable disposition and his enterprise as a charity. But then, so far as the workmen are concerned, it boots little whether he makes available the products free to the poor. They contribute labour in return for wages and conditions of service. For them the charitable employer is exactly like a commercial-minded employer. Both exact hardwork, both pay similar wages, both treat them as human machine cogs and nothing more. The material difference between the commercial and the compassionate employers is not with reference to the workmen but with reference to the recipients of goods and services. Charity operates not *vis-a-vis* the workmen in which case they will be paying a liberal wage and generous extras with no prospect of strike. The beneficiaries of the employer's charity are the indigent consumers. Industrial law does not take note of such extraneous factors but regulates industrial relations between employers and employers, employers and workmen and workmen and workmen. From the point of view of the workmen there is no charity. For him charity must begin at home. From these strands of thought flows the conclusion that the second group may legitimately and legally be described as industry. The fallacy in the contrary contention lies in shifting the focus from the worker and the industrial activity to the disposal of the end product. This law has nothing to do with that. The income-tax law may have, social opinion may have.

130. Some of the appellants may fall under the second category just described. While we are not investigating into the merits of those appeals, we may as well indicate, in a general way, that the Gandhi Ashram, which employs workers like spinners and weavers and supplies cloth or other handicraft at concessional rates to needy rural consumers, may not qualify for exemption. Even so, particular incidents may have to be closely probed before pronouncing with precision upon the nature of the activity. If cotton or yarn is given free to workers, if

charkhas are made available free for families, if fair price is paid for the net product and substantial charity thus benefits the spinners, weavers and other handicraftmen, one may have to look closely into the character of the enterprise. If employees are hired and their services are rewarded by wages - whether on cottage industry or factory basis - the enterprises become industries, even if some kind of concession is shown and even if the motive and project may be to encourage and help poor families and find them employment. A compassionate industrialist is nevertheless an industrialist. However, if raw material is made available free and the finished product is fully paid for - rather exceptional to imagine - the conclusion may be hesitant but for the fact that the integrated administrative, purchase, marketing, advertising and other functions are like in trade and business. This makes them industries. Noble objectives, pious purposes, spiritual foundations and developmental projects are no reason not to implicate these institutions as industries.

131. We now move on to economic activities and occupations of an altruistic character falling under the third category.

132. The heart of trade or business or analogous activity is organisation with an eye on competitive efficiency, by hiring employees, systematising processes, producing goods and services needed by the community and obtaining money's worth of work from employees. If such be the nature of operations and employer-employee relations which make an enterprise an industry, the motivation of the employer in the final disposal of products or profits is immaterial. Indeed the activity is patterned on a commercial basis, judged by what other similar undertakings and commercial adventures do. To qualify for exemption from the definition of 'industry' in a case where there are employers and employees and systematic activities and production of goods and services, we need a totally different orientation, organisation and method which will stamp on the enterprise the imprint of commerciality. Special emphasis, in such cases, must be placed on the central fact of employer-employee relations. If a philanthropic devotion is the basis for the charitable foundation or establishment, the institution is headed by one who whole-heartedly dedicates himself for the mission and pursues it with passion, attracts others into the institution, not for wages but for sharing in the cause and its fulfilment, then the undertaking is not 'industrial'. Not that the presence of charitable impulse extricates the institution from the definition in Section *2*(*j*) but that there is no economic relationship such as is found in trade or business between the head who employs and the others who emotively flock to render service. In one sense, there are no employers and employees but crusaders all. In another sense, there is no wage basis for the employment but voluntary participation in the production, inspired by lofty ideals and unmindful of remuneration, service conditions and the like. Supposing there is an Ashram or Order with a guru or other head. Let us further assume that there is a band of disciples, devotees or priestly subordinates in the Order, gathered together for prayers, ascetic practices, bhajans, meditation and worship. Supposing, further, that outsiders are also invited daily or occasionally, to share in the spiritual proceedings. And, let us assume that all the inmates of the Ashram and members of the Order, invitees, guests and other outside participants are fed, accommodated and looked after by the institution. In such a case, as often happens, the cooking and the cleaning, the bed-making and service, may often be done, at least substantially by the Ashramites themselves. They may chant in spiritual ecstasy even as

material goods and services are made and served. They may affectionately look after the guests, and, all this they may do, not for wages but for the chance to propitiate the Master, work selflessly and acquire spiritual grace. It may well be that they may have surrendered their lucrative employment to come into the holy institution. It may also be that they take some small pocket money from the donations or takings of the institution. Nay more; there may be a few scavengers and servants, a part-time auditor or accountant employed on wages. If the substantial number of participants in making available goods and services, if the substantive nature of the work, as distinguished from trivial items, is rendered by voluntary wage-less *sishyas,* it is impossible to designate the institution as an industry, notwithstanding a marginal few who are employed on a regular basis for hire. The reason is that in the crucial, substantial and substantive aspects of institutional life the nature of the relations between the participants is non-industrial. Perhaps, when Mahatma Gandhi lived in Sabarmati, Aurobindo had his hallowed silence in Pondicherry, the inmates belonged to this chastened brand. Even now, in many foundations, centres, monasteries, holy orders and Ashrams in the East and in the West, spiritual fascination pulls men and women into the precincts and they work tirelessly for the Maharishi or Yogi or Swamiji and are not wage-earners in any sense of the term. Such people are not workmen and such institutions are not industries despite some menials and some professionals in a vast complex being hired. We must look at the predominant character of the institution and the nature of the relations resulting in the production of goods and services. Stray wage-earning employees do not shape the soul of an institution into an industry.

Research

135. 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 from 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 wail 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 disconnected from the many industries which funded the institute itself, it can be regarded as an organisation, propelled by systematic activity, modelled on co-operation 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.

Clubs

137. Are clubs industries? The wide words used in Section *2*(*j*) if applied without rational limitations, may cover every bilateral activity even spiritual, religious, domestic, conjugal,

pleasurable or political. But functional circumscriptions spring from the subject-matter and other cognate considerations already set out early in this judgment. Industrial law, any law, may insanely run amok if limitless lexical liberality were to innate expressions into bursting point or proliferate odd judicial arrows which at random sent, hit many an irrelevant mark the legislative archer never meant. To read down words to yield relevant sense is a pragmatic art, if care is taken to eschew subjective projections masked as judicial processes. The true test, as we apprehend from the economic history and functional philosophy of the Act is based on the pathology of industrial friction and explosion impeding community production and consumption and imperilling peace and welfare. This social pathology arises from the exploitative potential latent in organized employer-employee relations. So, where the dichotomy of employer and workmen in the process of material production is present, the service of economic friction and need for conflict resolution show up. The Act is meant to obviate such confrontation and 'industry' cannot functionally and defunctionally exceed this object. The question is whether in a club situation - or of a co-operative or even a monastery situation, for that matter - a dispute potential of the nature suggested exists. If it does, it is an industry, since the basic elements are satisfied If productive co-operation between employer and employee is necessary, conflict between them is on the cards, be it a social club, mutual benefit society, panjarapole, public service or professional office. Tested on this touchstone, most clubs will fail to qualify for exemption. For clubs - gentlemen's clubs, proprietory clubs, service clubs, investment clubs, sports clubs, art clubs, military clubs or other brands of recreational associations - when X-rayed from the industrial angle, project a picture on the screen typical of employers hiring employees for wages for rendering services and/or supplying goods on a systematic basis at specified hours. There is a co-operation, the club management providing the capital, the raw material, the appliances and auxiliaries and the cooks, waiters, bell boys, pickers, barmaids or other servants making available enjoyable eats, pleasures and other permissible services for price paid by way of subscriptions or bills charged. The club life, the warm company, the enrichment of the spirits and freshening of the mind are there. But these blessings do not contradict the co-existence of an 'industry' in the technical sense. Even tea-tasters, hired for high wages, or commercial art troupes or games teams remunerated fantastically, enjoy company, taste, travel and games; but, elementally, they are workmen with employers above and together constitute not merely entertainment groups but industries under the Act. The protean hues of human organization project delightfully different designs depending upon the legal prism and the filtering process used. No one can deny the cultural value of club life; neither can anyone blink at the legal result of the organization.

138. The only ground to extricate clubs from the coils of industrial law (except specific statutory provision) is absence of employer-employee co-operation on the familiar luring-firing pattern. Before we explain this possible exemption and it applies to many clubs at the poorer levels of society we must meet another submission made by Counsel. Clubs are exclusive; they cater to needs and pleasures of members, not of the community as such and this latter feature salvages them from the clutches of industrial regulation. We do not agree. Clubs are open to the public for membership subject to their own bye-laws and rules. But any member of the community complying with those conditions and waiting for his turn has a reasonable chance of membership. Even the world's summit club - the United Nations has

cosmic membership subject to vetoes, qualifications, voting and what not. What we mean is that a club is not a limited partnership but formed from the community. Moreover, even the most exclusive clubs of imperial vintage and class snobbery admit members' guests who are not specific souls but come from the undefused community or part of a community. Clubs, speaking generally are social institutions enlivening community life and are the fresh breath of relaxation in a faded society. They serve a section and answer the doubtful test of serving the community. They are industry.

141. Even these people's organs cannot be non-industries unless one strict condition is fulfilled. They should be - and usually are - self-serving. They are poor men's clubs without the wherewithal of a ***Gymkhana*** or ***Cricket Club of India*** which reached this Court for adjudication. Indeed, they rarely reach a Court being easily priced out of our expensive judicial market. These self-service clubs do not have hired employees to cook or serve, to pick or chase balls, to tie up nets or arrange the cards table, the billiards table, the bar and the bath or do those elaborate business management chores of the well-run city or country clubs. The members come and arrange things for themselves. The secretary, an elected member, keeps the key. Those interested in particular pursuits organize those terms themselves. Even the small accounts or clerical items are maintained by one member or other. On special evenings all contribute efforts to make a good show, excursion, joy picnic or anniversary celebration. The dynamic aspect is self-service. In such an institution, a part-time sweeper or scanvenger or multi-purpose attendant may sometimes exist. He may be an employee. This marginal element does not transform a little association into an industry. We have projected an imprecise profile and there may be minor variations. The central thrust of our proposition is that if a club or other like collectivity has a basic and dominant self-service mechanism, a modicum of employees at the periphery will not metamorphose it into a conventional club whose verve and virtue are taken care of by paid staff, and the members' role is to enjoy. The small man's Nehru Club, Gandhi Granthasala, Anna Manram, Netaji Youth Centre, Brother Music Club, Muslim Sports Club and like organs often named after national or provincial heroes and manned by members themselves as contrasted with the upper bracket's Gymkhana Club, Cosmopolitan Club, Cricket Club of India, National Sports Club of India whose badge is pleasure paid for and provided through skilled or semi-skilled catering staff. We do not deal with hundred per cent social service clubs which meet once in a way, hire a whole evening in some hotel, have no regular staff and devote their energies and resources also to social service projects. There are many brands and we need not deal with every one. Only if they answer the test laid down affirmatively they qualify.

143. The ***Madras Gymkhana Club***, a blue-blooded members' club, has the socialite cream of the city on its rolls. It offers choice facilities for golf, tennis and billiards, arranges dances, dinners and refreshments, entertains and accommodates guests and conducts tournaments for members and non-members. These are all activities richly charged with pleasurable service. For fulfilment of these objects the club employs officers, caterers, and others on reasonable salaries. Does this club become an industry? The label matters little; the substance is the thing. A night-club for priced nocturnal sex is a lascivious 'industry'. But a literary club, meeting weekly to read or discuss poetry, hiring a venue and running solely by the self-help of the participants, is not. Hidayatullah, C.J., in ***Gymkhana*** ruled that the club

was not an 'industry'. Reason? 'An industry is thus said to involve co-operation between employer and employees for the object of satisfying material human needs but not for oneself nor for pleasure nor necessarily for profit'.

> It is not of any consequence that there is no profit motive because that is considered immaterial. It is also true that the affairs of the club are organised in the way business is organised, and that there is production of material and other services and in a limited way production of material goods mainly in the catering department. But these circumstances are not truly representative in the case of the club because the services are to the members themselves for their own pleasure and amusement and the material goods are for their consumption. In other words, the club exists for its members. No doubt occasionally strangers also take benefit from its services but they can only do so on invitation of members. No one outside the list of members has the advantage of these services as of right. Nor can these privileges be bought. In fact they are available only to members or through members.
>
> If today the club were to stop entry of outsiders, no essential change in its character vis-a-vis the members would take place. In other words, the circumstances that guests are admitted is irrelevant to determine if the club is an industry. Even with the admission of guests being open the club remains the same, that is to say, a member's self-serving institution. No doubt the material needs or wants of a section of the community is catered for but that is not enough. This must be done as part of trade or business or as an undertaking analogous to trade or business. This element is completely missing in a members' club.

144. Why is the club not an industry? It involves co-operation of employer and employees, organised like in a trade and calculated to supply pleasurable utilities to members and others. The learned Judge agrees that "the material needs or wants of a section of the community is catered for but that is not enough. This must be done as part of trade or business or as an undertaking analogous to trade or business. This element is completely missing in a members' club".

145. 'This element'? What element makes it analogous to trade? Profit motive? No, says the learned Judge. Because it is a self-serving institution? Yes? Not at all. For, if it is self-service then why the expensive establishment and staff with high salary bills? It is plain as day-light that the club members do nothing to produce the goods or services. They are rendered by employees who work for wages. The members merely enjoy club life, the geniality of company and exhilarating camaraderie, to the accompaniment of dinners, dances, games and thrills. The 'reason' one may discover is that it is a members' club in the sense that "the club belongs to members for the time being on its list of members and that is what matters. Those members can deal with the club as they like. Therefore, the club is identified with its members at a given point of time. Thus it cannot be said that the club has an existence apart from the members".

146. We are intrigued by this reason. The ingredients necessary for an industry are present here and yet it is declared a non-industry because the club belongs to members only. A company belongs to the shareholders only; a co-operative belongs to the members only; a

firm of experts belongs to the partners only. And yet, if they employ workmen with whose co-operation goods and services are made available to a section of the community and the operations are organised in the manner typical of business method and organisation, the conclusion is irresistible that an 'industry' emerges. Likewise, the members of a club may own the institution and become the employers for that reason. It is transcendental logic to jettison the inference of an 'industry' from such a factual situation on the ingenious plea that a club "belongs to members for the time being and that is what matters". We are inclined to think that that just does not matter. The ***Gymkhana*** case, we respectfully. hold, is wrongly decided.

147. The ***Cricket Club of India*** stands in a worse position. It is a huge undertaking with activities wide-ranging, with big budgets, army of staff and profit-making adventures. Indeed, the members share in the gains of these adventures by getting money's worth by cheaper accommodation, free or low priced tickets for entertainment and concessional refreshments; and yet Bhargava, J. speaking for the Court held this mammoth industry a non-industry. Why? Is the promotion of sports and games by itself a *legal* reason for excluding the organisation from the category of industries if all the necessary ingredients are present? Is the fact that the residential facility is exclusive for members an exemptive factor? Do not the members share in the profits through the invisible process of lower charges? When all these services are rendered by hired employees, how can the nature of the activity be described as self-service, without taking liberty with reality? A number of utilities which have money's worth, are derived by the members. An indefinite section of the community entering as the guests of the members also share in these services. The testimony of the activities can leave none in doubt that this colossal 'club' is a vibrant collective undertaking which offers goods and services to a section of the community for payment and there is co-operation between employer and employees in this project. The plea of non-industry is un-presentable and exclusion is possible only by straining law to snapping point to salvage a certain class of socialite establishments. Presbyter is only priest writ large. Club is industry *manu brevi.*

Co-operatives

Co-operative societies ordinarily cannot, we feel, fall outside Section *2*(*j*). After all, the society, a legal person, is the employer. The members and/or others are employees and the activity partakes of the nature of trade. Merely because co-operative enterprises deserve State encouragement the definition cannot be distorted. Even if the society is worked by the members only, the entity (save where they are few and self-serving) is an industry because the member-workers are paid wages and there can be disputes about rates and different scales of wages among the categories i.e. workers and workers or between workers and employer. These societies - credit societies, marketing co-operatives, producers' or consumers' societies or apex societies - are industries.

148. Do credit unions, organised on a co-operative basis, scale the definitional walls of industry? They do. There, a credit union, which was a co-operative association which pooled the savings of small people and made loans to its members at low interest, was considered from the point of view of industry. Admittedly, they were credit unions incorporated as co-operative societies and the thinking of Mason, J. was that such institutions were industrial in character. The industrial mechanism of society according to Starke, J. included "all those

bodies 'of men associated, in various degrees of competition and co-operation, to win their living by providing the community with some service which it requires' ". Mason, J., went a step further to hold that even if such credit unions were an adjunct of industry, they could be regarded as industry.

149. It is enough, therefore, if the activities carried on by credit unions can accurately be described as incidental to industry or to the organized production , transportation or distribution of commodities or other forms of material wealth. To our minds the evidence admits of no doubt that the activities of credit unions are incidental in this sense.

150. This was sufficient, in his view, to conclude that credit unions constituted an industry under an Act which has resemblance to our own. In our view, therefore, societies are industries.

***The Safdarjung Hospital* case**

151. A sharp bend in the course of the law came when ***Safdarjung*** was decided. The present reference has come from *that landmark case,* and, necessarily, it claims our close attention. Even so, no lengthy discussion is called for, because the connotation of 'industry' has already been given by us at sufficient length to demarcate our deviation from the decision in ***Safdarjung.***

152. Hidayatullah, C.J., considered the facts of the appeals, clubbed together there and held that all the three institutions in the bunch of appeals were not industries. Abbreviated reasons were given for the holding in regard to each institution, which we may extract for precise understanding:

> It is obvious that Safdarjung Hospital is not embarked on an economic activity which can be said to be analogous to trade or business. There is no evidence that it is more than a places where persons can get treated. This is a part of the functions of Government and the hospital is run as a Department of Government. It cannot, therefore, be said to be an industry.
>
> The Tuberculosis Hospital is not an independent institution. It is a part of the Tuberculosis Association of India. The hospital is wholly charitable and is a research institute. The dominant purpose of the hospital is research and training, but as research and training cannot be given without beds in a hospital, the hospital is run. Treatment is thus a part of research and training. In these circumstances the Tuberculosis Hospital cannot be described as industry.
>
> The objects of the Kurji Holy Family Hospital are entirely charitable. It carries on work of training, research and treatment. Its income is mostly from donations and distribution of surplus as profit is prohibited. It is, therefore, clear that it is not an industry as laid down in the Act.

153. Even a cursory glance makes it plain that the learned Judge took the view that a place of treatment of patients, run as a department of government, was not an industry because it was a part of the functions of the government. We cannot possibly agree that running a hospital, which is a welfare activity and not a sovereign function, cannot be an industry. Likewise, dealing with the ***Tuberculosis Hospital*** case, the learned Judge held that

the hospital was wholly charitable and also was a research institute. Primarily, it was an institution for research and training. Therefore, the Court concluded, the institution could not be described as industry. *Non-sequitur*. Hospital facility, research products and training services are surely services and hence industry. It is difficult to agree that a hospital is not an industry. In the third case the same factors plus the prohibition of profit are relied on by the Court. We find it difficult to hold that absence of profit, or functions of training and research, take the institution out of the scope of industry.

154. Although the facts of the three appeals considered in ***Safdarjung*** related only to hospitals with research and training component, the Bench went extensively into a survey of the earlier precedents and crystallisation of criteria for designating industries. After stating that trade and business have a wide connotation, Hidayatullah, C.J., took the view that professions must be excluded from the ambit of industry: "A profession ordinarily is an occupation requiring intellectual skill, often coupled with manual skill. Thus a teacher uses purely intellectual skill, while a painter uses both. In any event, they are not engaged in an occupation in which employers and employees co-operate in the production or sale of commodities or arrangement for their production or sale or distribution and their services cannot be described as material services".

155. We are unable to agree with this rationale. It is difficult to understand why a school or a painting institute or a studio which uses the services of employees and renders the service to the community cannot be regarded as an industry. What is more baffling is the subsequent string of reasons presented by the learned Judge:

> What is meant by "material services" needs some explanation too. Material services are not services which depend wholly or largely upon the contribution of professional knowledge, skill or dexterity for the production of a result. Such services being given individually and by individuals are services no doubt but not material services. Even an establishment where many such operate cannot be said to convert their professional services into material services. Material services involve an activity carried on through co-operation between employers and employees to provide the community with the use of something such as electric power, water, transportation, mail delivery, telephones and the like. In providing these services there may be employment of trained men and even professional men, but the emphasis is not on what these men do but upon the productivity of a service organised as an industry and commercially valuable. Thus the services of professional men involving benefit to individuals according to their needs, such as doctors, teachers, lawyers, solicitors etc., are easily distinguishable from an activity such as transport service. The latter is of a commercial character in which something is brought into existence quite apart from the benefit to particular individuals. It is the production of this something which is described as the production of material services.

156. With the greatest respect to the learned Chief Justice, the arguments strung together in this paragraph are too numerous and subtle for us to imbibe. It is transcendental to define *material* services as excluding professional services. We have explained this position at some length elsewhere in this judgment and do not feel the need to repeat. Nor are we convinced that ***Gymkhana*** and ***Cricket Club of India*** are correctly decided. The learned Judge placed

accent on the non-profit making members' club as being outside the pale of trade or industry. We demur to this proposition.

157. Another intriguing reasoning in the judgment is that the Court has stated "it is not necessary that there must be a profit motive but the enterprises must be analogous to trade or business in a commercial sense". However, somewhat contrary to this reasoning we find, in the concluding part of the judgment, emphasis on the non-profit making aspect of the institutions. Equally puzzling is the reference to "commercial sense": what precisely does this expression mean? It is interesting to note that the word "commercial" has more than one semantic shade. If it means profit-making, the reasoning is self-contradictory. If it merely means a commercial pattern of organisation, of hiring and firing employees, of indicating the nature of employer-employee relation as in trade or commercial house, then the activity-oriented approach is the correct one. On that footing, the conclusions reached in that case do not follow. As a matter of fact, Hidayatullah, C.J., had in ***Gymkhana*** turned down the test of commerciality: "Trade is only one aspect of industrial activity .... This requires co-operation in some form between employers and workmen and the result is directly the product of this association but *not necessarily commercial"*. Indeed, while dealing with the reasoning in ***Hospital Mazdoor Sabha*** he observes: "if a hospital, nursing home or a dispensary is run as a business, in a commercial way, there may be found elements of an industry there". This facet suggests either profit motive, which has been expressly negatived in the very case, or commercial-type of activity, regardless of profit, which affirms the test which we have accepted, namely, that there must be employer-employee relations more or less on the pattern of trade or business. All that we can say is that there are different strands of reasoning in the judgment which are somewhat difficult to reconcile. Of course, when the learned Judge states that the use of the first schedule to the Act depends on the condition precedent of the existence of an industry, we agree. But, that by itself does not mean that a hospital cannot be regarded as an industry, profit or no profit, research or no research. We have adduced enough reasons in the various portions of this judgment to regard hospitals, research institutions and training centres as valuable material services to the community, qualifying for coming within Section 2(j). We must plainly state that *vis-a-vis* hospitals, ***Safdarjung*** was wrong and ***Hospital Mazdoor Sabha*** was right.

158. Because of the problems of reconciliation of apparently contradictory strands of reasoning in ***Safdarjung*** we find subsequent cases of this Court striking different notes. In fact, one of us (Bhagwati, J.) in ***Indian Standards Institution*** referred, even at the opening, to the baffling, perplexing question which judicial ventures had not solved. We fully endorse the observations of the Court in ***ISI:***

> So infinitely varied and many-sided is human activity and with the incredible growth and progress in all branches of knowledge and ever widening areas of experience at all levels, it is becoming so diversified and expanding in so many directions hitherto unthought of, that no rigid and doctrinaire approach can be adopted in considering this question. Such an approach would fail to measure up to the needs of the growing welfare state which is constantly engaged in undertaking new and varied activities as part of its social welfare policy. The concept of industry, which is intended to be a convenient and effective tool in the hands of industrial

> adjudication for bringing about industrial peace and harmony, would lose its capacity for adjustment and change. It would be petrified and robbed of its dynamic content. The Court should, therefore, so far as possible, avoid formulating or adopting generalisations and hesitate to cast the concept of industry in a narrow rigid mould which would not permit of expansion as and when necessity arises. Only some working principles may be evolved which would furnish guidance in determining what are the attributes or characteristics which would ordinarily indicate that an undertaking is analogous to trade or business.

159. Our endeavour in this decision is to provide such working principles. This Court, within a few years of the enactment of the salutary statute, explained the benign sweep of 'industry' in ***Banerji*** which served as beacon in later years - ***Ahmedabad Textile Research*** acted on it, ***Hospital Mazdoor Sabha*** and ***Nagpur Corporation*** marched in its sheen. The law shed steady light on industrial inter-relations and the country's tribunals and courts settled down to evolve a progressive labour jurisprudence, burying the bad memories of *laissez faire* and bitter struggles in this field and nourishing new sprouts of legality fertilised by the seminal ratio in ***Banerji***. Indeed, every great judgment is not merely an adjudication of an existing *lis* but an appeal addressed by the present to the emerging future. And here the future responded, harmonising with the human-scape hopefully projected by Part IV of the Constitution. But the drama of a nation's life, especially when it confronts die-hard forces, develops situations of imbroglio and tendencies to back-track. And law quibbles where life wobbles. Judges only read signs and translate symbols in the national sky. So, ensued an era of islands of exception dredged up by judicial process. Great clubs were privileged out, liberal professions swam to safety, educational institutions, vast and small, were helped out, divers charities, disinclined to be charitable to their own weaker workmen, made pious pleas and philanthropic appeals to be extricated. A procession of decisions - ***Solicitors'*** case, ***University of Delhi***, ***Gymkhana Club***, ***Cricket Club of India***. ***Chartered Accountants*** climaxed by ***Safdarjung*****,** - carved out sanctuaries. The six-member Bench, the largest which sat on this Court conceptually to reconstruct 'industry', affirmed and reversed, held profit motive irrelevant but upheld charitable service as exemptive, and in its lights and shadows, judicial thinking became ambivalent and industrial jurisprudence landed itself in a legal quagmire. Pinjrapoles sought salvation and succeeded in principle (Bombay Panjrapole), Chambers of Commerce fought and failed, hospitals battled to victory [***Dhanrajgirji Hospital***], standards institute made a vain bid to extricate [***ISI*** case], research institutes, at the High Court level, waged and won non-industry status in Madras and Kerala. The murky legal sky paralysed tribunals and courts and administrations, and then came, in consequence, this reference to a larger Bench of seven Judges.

160. ***Banerji*****,** amplified by ***Corporation of Nagpur***, in effect met with its Waterloo in ***Safdarjung***. But in this latter case two voices could be heard and subsequent rulings zigzagged and conflicted precisely because of this built-in ambivalence. It behoves us, therefore, hopefully to abolish blurred edges, illumine penumbral areas and overrule what we regard as wrong. Hesitancy, half-tones and hunting with the hounds and running with the hare can claim heavy penalty in the shape of industrial confusion, adjudicatory quandary and administrative perplexity at a time when the nation is striving to promote employment

through diverse strategies which need, for their smooth fulfilment, less stress and distress, more mutual understanding and trust based on a dynamic rule of law which speaks clearly, firmly and humanely. If the salt of law lose its savour of progressive certainty wherewith shall it be salted? So we proceed to formulate the principles, deducible from our discussion, which are decisive, positively and negatively, of the identity of 'industry' under the Act. We speak, not exhaustively, but to the extent covered by the debate at the bar and, to that extent, authoritatively, until overruled by a larger Bench or superseded by the legislative branch.

I

'Industry', as defined in Section *2*(*j*) and explained in *Banerji* (supra), 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.

II

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 ***Banerji*** and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (*supra*), 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, adventures 'analogous to the *carrying* on the 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 analogy.

III

Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer 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 off this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(*a*) The consequences are (*i*) professions, (*ii*) clubs, (*iii*) educational institutions, (*iv*) co-operatives, (*v*) research institutes (*vi*) charitable projects and (*vii*) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section *2*(*j*).

(*b*) A restricted category of professions, clubs, co-operatives and even *gurukulas* and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(*c*) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or *ashramites* working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt — not other generosity, compassion, developmental passion or project.

IV

The dominant nature test

(*a*) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the ***University of Delhi*** case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the ***Corporation of Nagpur***, will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(*b*) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(*c*) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section *2*(*j*).

(*d*) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

V

We overrule ***Safdarjung***. ***Solicitors'*** case, ***Gymkhana***, ***Delhi University***, ***Dhanrajgirji Hospital*** and other rulings whose ratio runs counter to the principles enunciated above, and ***Hospital Mazdoor Sabha*** is hereby rehabilitated.

We conclude with diffidence because Parliament, which has the commitment to the political nation to legislate promptly in vital areas like Industry and Trade and articulate the welfare expectations in the 'conscience' portion of the Constitution, has hardly intervened to re-structure the rather clumsy, vapourous and tall-and-dwarf definition or tidy up the scheme although judicial thesis and anti-thesis, disclosed in the two-decades-long decisions, should have produced a legislative synthesis becoming of a welfare state and socialistic society, in a world setting where I.L.O. norms are advancing and India needs updating. We feel confident, in another sense, since Counsel stated at the bar that a bill on the subject is in the offing. The rule of law, we are sure, will run with the rule of life - Indian life - at the threshold of the decade of new development in which labour and management, guided by the State, will constructively partner the better production and fair diffusion of national wealth. We have stated that, save the Bangalore Water Supply and Sewerage Board appeal, we are not disposing of the others on the merits. We dismiss that appeal with costs and direct that all the others be posted before a smaller Bench for disposal on the merits in accordance with the principles of law herein laid down.

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General Manager, Telecom **v.** *A. Srinivasa Rao*

(1997) 8 SCC 767

J.S. VERMA, C.J. - 1. This matter comes up before a three-Judge Bench because of a reference made by a two-Judge Bench which doubted the correctness of an earlier two-Judge Bench decision of this Court in ***Sub-Divisional Inspector of Post* v. *Theyyam Joseph*** [(1996) 8 SCC 489]. It was stated at the Bar that a later two-Judge Bench decision reported as ***Bombay Telephone Canteen Employees' Association* v. *Union of India*** [AIR 1997 SC 2817], also takes the same view as in the case of ***Theyyam Joseph*.**

2. The only point for decision in this appeal is whether the Telecom Department of the Union of India is an industry within the meaning of the definition of "industry" in Section 2(j) of the Industrial Disputes Act, 1947. It may here be observed that the amendment made in that definition in 1982 has not been brought into force by the Central Government by issuance of notification required for the purpose. It is, therefore, not necessary for us to consider whether the Telecommunication Department of the Union of India would be an "industry" within the meaning thereof in the amended provision which is not yet brought into force. We are, in this matter, concerned with the earlier definition of "industry" which continues to be in force and which was the subject of consideration by a seven-Judge Bench in ***Bangalore Water Supply*** case [(1978) 2 SCC 213].

3. The above point arises for consideration out of a reference made under Section 10-A of the Industrial Disputes Act, 1947, which matter is now pending in the High Court. The contention of the appellant throughout has been that the reference was incompetent since the Telecommunication Department of the Union of India is not an "industry" within the meaning of its definition contained in the existing unamended Section 2(j) of the Industrial Disputes Act, 1947. Admittedly, this question has to be answered according to the decision of this Court in ***Bangalore Water Supply***, which is a binding precedent. The dominant nature test for deciding whether the establishment of an "industry" or not is summarized in para 143 of the judgment of Justice Krishna Iyer in ***Bangalore Water Supplyc*** *Case* as under:

"143. *The dominant nature test:*

(a) Whereas a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the ***University of Delhi*** case (***University of Delhi* v. *Ram Nath*** [AIR 1963 SC 1873: (1963) 2 LIJ 335)] or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the ***Corporation of the city of Nagpur*** (***Corporation of the City of Nagpur* v. *Employees*** [AIR 1960 SC 675: (1960) 1 LIJ 523)] will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby."

4. It is rightly not disputed by the learned counsel for the appellant that according to this test the Telecommunication Department of the Union of India is an "industry" within that definition because it is engaged in a commercial activity and the Department is not engaged in discharging any of the sovereign functions of the State.

5. A two-Judge Bench of this Court in ***Theyyam Joseph*** case [(1996) 8 SCC 489] held that the functions of the Postal Department are part of the sovereign functions of the State and it is, therefore, not an "industry" within the definition of Section 2(j) of the Industrial Disputes Act, 1947. Incidentally, this decision was rendered without any reference to the seven-Judge Bench in ***Bangalore Water Supply***. In a later two-Judge Bench decision in ***Bombay Telephone Canteen Employees' Association*** [AIR 1997 SC 2817] this decision was followed for taking the view that the Telephone Nigam is not an "industry". Reliance was placed in ***Theyyam Joseph*** case for that view. However, in ***Bombay Telephone Canteen Employees Association*** case (i.e. the latter decision), we find a reference to the ***Bangalore Water Supply*** case. After referring to the decision in ***Bangalore Water Supply*** case, it was observed that if the doctrine enunciated in ***Bangalore Water Supply*** case is strictly applied, the consequence is "catastrphic." With respect, we are unable to subscribe to this view for the obvious reason that it is in direct conflict with the seven-Judge Bench decision in *Bangalore Water Supply case* by which we are bound. It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in ***Bangalore Water Supply*** or to bypass that decision so long as it holds the field. Moreover, that decision was rendered long back – nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in ***Bangalore Water Supply c***ase. We must, therefore, add that the decision **in** ***Theyyam Joseph*** **and** ***Bombay Telephone Canteen Employees' Association*** cannot be treated as laying down the correct law. This being the only point for decision in this appeal, it must fail.

Accordingly, the appeal is dismissed.

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State of U.P. **v.** *Jai Bir Singh*

(2005) 5 SCC 1

D.M. DHARMADHIKARI, J. - This present appeal along with other connected cases has been listed before this Constitution Bench of five Judges on a reference made by a Bench of three Hon'ble Judges of this Court finding an apparent conflict between the decisions of two Benches of this Court in the cases of ***Chief Conservator of Forests* v. *Jagannath Maruti Kondhare*** [(1996) 2 SCC 293] of *three Judges* and ***State of Gujarat* v. *Pratamsingh Narsinh Parmar*** [(2001) 9 SCC 713] of *two Judges*.

2. On the question of whether "Social Forestry Department" of State, which is a welfare scheme undertaken for improvement of the environment, would be covered by the definition of "industry" under Section 2(*j*) of the Industrial Disputes Act, 1947, the aforesaid Benches (supra) of this Court culled out differently the ratio of the seven-Judge Bench decision of this Court in the case of ***Bangalore Water Supply & Sewerage Board* v. *A. Rajappa*** [(1978) 2 SCC 213] (shortly hereinafter referred to as ***Bangalore Water Supply*** case). The Bench of three Judges in the case of ***Chief Conservator of Forests* v. *Jagannath Maruti Kondhare*** based on the decision of ***Bangalore Water Supply*** case came to the conclusion that "Social Forestry Department" is covered by the definition of "industry" whereas the two-Judge Bench decision in ***State of Gujarat* v. *Pratamsingh Narsinh Parmar*** took a different view.

3. As the cleavage of opinion between the two Benches of this Court seems to have been on the basis of the seven-Judge Bench decision of this Court in the case of ***Bangalore Water Supply***, the present case along with the other connected cases, in which correctness of the decision in the case of ***Bangalore Water Supply*** is doubted, has been placed before this Bench.

4. Various decisions rendered by this Court prior to and after the decision in ***Bangalore Water Supply*** on interpretation of the definition of the word "industry" under the Industrial Disputes Act, 1947 have been cited before us. It has been strenuously urged on behalf of the employers that the expansive meaning given to the word "industry" with certain specified exceptions carved out in the judgment of ***Bangalore Water Supply*** is not warranted by the language used in the definition clause. It is urged that the Government and its departments while exercising its "sovereign functions" have been excluded from the definition of "industry". On the question of "what is sovereign function", there is no unanimity in the different opinions expressed by the Judges in ***Bangalore Water Supply*** case. It is submitted that in a constitutional democracy where sovereignty vests in the people, all welfare activities undertaken by the State in discharge of its obligation under the directive principles of State policy contained in Part IV of the Constitution are "sovereign functions". To restrict the meaning of "sovereign functions" to only specified categories of so-called "inalienable functions" like law and order, legislation, judiciary, administration and the like is uncalled for. It is submitted that the definition of "industry" given in the Act is, no doubt, wide but not so wide as to hold it to include in it all kinds of "*systematic organised activities*" undertaken by the State and even individuals engaged in professions and philanthropic activities.

5. On behalf of the employers, it is also pointed out that there is no unanimity in the opinions expressed by the Judges in ***Bangalore Water Supply*** case on the ambit of the definition of "industry" given in the Act. Pursuant to the observations made by the Judges in their different opinions in the judgment of ***Bangalore Water Supply*** the legislature responded and amended the Act by the Industrial Disputes (Amendment) Act, 1982. In the amended definition, certain specified types of activities have been taken out of the purview of the word "industry". The Act stands amended but the amended provision redefining the word "industry" has not been brought into force because notification to bring those provisions into effect has not been issued in accordance with sub-section (2) of Section 1 of the Amendment Act. The amended definition thus remains on the statute unenforced for a period now of more than 23 years.

6. On behalf of the employers, it is pointed out that all other provisions of the Amendment Act of 1982, which introduced amendments in various other provisions of the Industrial Disputes Act have been brought into force by issuance of a notification, but the Amendment Act to the extent of its substituted definition of "industry" with specified categories of industries taken out of its purview, has not been brought into force. Such a piecemeal implementation of the Amendment Act, it is submitted, is not contemplated by sub-section (2) of Section 1 of the Amendment Act. The submission made is that if in response to the opinions expressed by the seven Judges in ***Bangalore Water Supply*** case the legislature intervened and provided a new definition of the word "industry" with exclusion of certain public utility services and welfare activities, the unamended definition should be construed and understood with the aid of the amended definition, which although not brought into force is nonetheless part of the statute.

7. On behalf of the employees, learned counsel vehemently urged that the decision in the case of ***Bangalore Water Supply*** being in the field as binding precedent for more than 23 years and having been worked to the complete satisfaction of all in the industrial field, on the principle of *stare decisis*, this Court should refrain from making a reference to a larger Bench for its reconsideration. It is strenuously urged that upsetting the law settled by ***Bangalore Water Supply*** is neither expedient nor desirable.

8. It is pointed out that earlier an attempt was made to seek enforcement of the amended Act through this Court [see ***Aeltemesh Rein*** **v.** ***Union of India*** [(1988) 4 SCC 54)]. The Union came forward with an explanation that for employees of the categories of industries excluded under the amended definition, no alternative machinery for redressal of their service disputes has been provided by law and therefore, the amended definition was not brought into force.

9. We have heard the learned counsel appearing on behalf of the employers and on the other side on behalf of the employees at great length. With their assistance, we have surveyed critically all the decisions rendered so far by this Court on the interpretation of the definition of "industry" contained in Section 2(*j*) of the Act. We begin with a close examination of the decision in the case of ***Bangalore Water Supply*** for considering whether a reference to a larger Bench for reconsideration of that decision is required.

10. Justice Krishna Iyer who delivered the main opinion on his own behalf and on behalf of Bhagwati and Desai, JJ. in his inimitable style has construed the various expressions used in the definition of "industry". After critically examining the previous decisions, he has recorded his conclusions.

11. What is to be noted is that the opinion of Krishna Iyer, J. on his own behalf and on behalf of Bhagwati and Desai, JJ. was only generally agreed to by Beg, C.J. who delivered a separate opinion with his own approach on interpretation of the definition of the word "industry". He agreed with the conclusion that Bangalore Water Supply and Sewerage Board is an "industry" and its appeal should be dismissed but he made it clear that since the judgment was being delivered on his last working day which was a day before the day he was to retire, he did not have enough time to go into a discussion of the various judgments cited, particularly on the nature of sovereign functions of the State and whether the activities in discharge of those functions would be covered in the definition of "industry". What he stated reads thus:

> "*165*. I have contented myself with a very brief and hurried outline of my line of thinking partly because I am in agreement with the conclusions of my learned Brother Krishna Iyer and I also endorse his reasoning almost wholly, but even more because the opinion I have dictated just now must be given today if I have to deliver it at all. From tomorrow I cease to have any authority as a judge to deliver it. Therefore, I have really no time to discuss the large number of cases cited before us, including those on what are known as 'sovereign' functions."

12. Beg, C.J. clearly seems to have dissented from the opinion of his other three brethren on excluding only certain State-run industries from the purview of the Act. According to him, that is a matter purely of legislation and not of interpretation. See his observations contained in para 163:

> "*163*. I would also like to make a few observations about the so-called 'sovereign' functions which have been placed outside the field of industry. I do not feel happy about the use of the term 'sovereign' here. I think that the term 'sovereign' should be reserved, technically and more correctly, for the sphere of ultimate decisions. Sovereignty operates on a sovereign plane of its own as I suggested in ***Kesavananda Bharati*** case [(1973) 4 SCC 225] supported by a quotation from Ernest Barker's *Social and Political Theory*. Again, the *term 'Regal'*, from which the term *'sovereign' functions appears to be derived, seems to be a misfit in a Republic where the citizen shares the political sovereignty in which he has even a legal share, however small, inasmuch as he exercises the right to vote*. What is meant by the use of the term 'sovereign', in relation to the activities of the State, is more accurately brought out by using the term 'governmental' functions although there are difficulties here also inasmuch as the Government has entered largely new fields of industry. *Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication*."(emphasis supplied)

13. Since Beg, C.J. was to retire on 22-2-1978, the Bench delivered the judgment on 21-2-1978 with its conclusion that the appeal should be dismissed. The above conclusion was unanimous but the three Hon'ble Judges namely Chandrachud, J. on behalf of himself and Jaswant Singh, J. speaking for himself and Tulzapurkar, J., on the day the judgment was delivered i.e. as on 21-2-1978, had not prepared their separate opinions. They only declared that they would deliver their separate opinions later. This is clear from para 170 of the judgment which reads thus:

> "*170*. We are in respectful agreement with the view expressed by Krishna Iyer, J. in his critical judgment that the Bangalore Water Supply and Sewerage Board appeal should be dismissed. *We will give our reasons later indicating the area of concurrence and divergence, if any, on the various points in controversy on which our learned Brother has dwelt*."(emphasis supplied)

14. On the retirement of Beg, C.J., Chandrachud, J. took over as the Chief Justice and he delivered his separate opinion on 7-4-1978 which was obviously neither seen by Beg, C.J. nor dealt with by the other three Judges: Krishna Iyer, Bhagwati and Desai, JJ. As can be seen from the contents of the separate opinion subsequently delivered by Chandrachud, C.J. (as he then was), he did not fully agree with the opinion of Krishna Iyer, J. that the definition of "industry" although of wide amplitude can be restricted to take out of its purview certain sovereign functions of the State limited to its "inalienable functions" and other activities which are essentially for self and spiritual attainments. Chandrachud, C.J. seems to have projected a view that all kinds of organised activities giving rise to employer and employee relationship are covered by the wide definition of "industry" and its scope cannot be restricted by identifying and including certain types of industries and leaving some other types impliedly outside its purview.

15. A separate opinion was delivered much later by Jaswant Singh, J. for himself and Tulzapurkar, J., after they had gone through the separate opinion given by Chandrachud, C.J. (as he then was). The opinion of Jaswant Singh for himself and Tulzapurkar, J. is clearly a dissenting opinion in which it is said that they are not agreeable with categories 2 and 3 of the charities excluded by Brother Krishna Iyer, J.

16. In the dissenting opinion of the two Judges, the definition covers only such activities

systematically and habitually carried on commercial lines for production of goods or for rendering material services to the community.

The dissenting opinion is on the lines of the opinion of Gajendragadkar, J. in the case of ***State of Bombay* v. *Hospital Mazdoor Sabha*** where it was observed that although the definition in the Act is very wide, "*a line has to be drawn in a fair and just manner*" to exclude some callings of services or undertakings which do not fit in with the provisions of the Act. We may quote from the dissenting opinion of Jaswant Singh, J. (for himself and for Tulzapurkar, J.):

> "However, bearing in mind the collocation of the terms in which the definition is couched and applying the *doctrine of noscitur a sociis* (which, as pointed out by this Court in ***State of Bombay* v. *Hospital Mazdoor Sabha*** means that, when two or more words which are susceptible of analogous meaning are coupled together they are

understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. Expressed differently, it means that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it), we are of the view that despite the width of the definition it could not be the intention of the legislature that categories 2 and 3 of the charities alluded to by our learned Brother Krishna Iyer in his judgment, hospitals run on charitable basis or as a part of the functions of the Government or local bodies like municipalities and educational and research institutions whether run by private entities or by Government and liberal and learned professions like that of doctors, lawyers and teachers, the pursuit of which is dependent upon an individual's own education, intellectual attainments and special expertise should fall within the pale of the definition. We are inclined to think that the definition is limited to those activities systematically or habitually undertaken on commercial lines by private entrepreneurs with the cooperation of employees for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community. It is needless to emphasise that in the case of liberal professions, the contribution of the usual type of employees employed by the professionals to the value of the end product (viz. advice and services rendered to the client) is so marginal that the end product cannot be regarded as the fruit of the cooperation between the professional and his employees."

17. The Judges delivered different opinions in the case of ***Bangalore Water Supply*** at different points of time and in some cases without going through or having an opportunity of going through the opinions of other Judges. They have themselves recorded that the definition clause in the Act is so wide and vague that it is not susceptible to a very definite and precise meaning. In the opinions of all of them it is suggested that to avoid reference of the vexed question of interpretation to larger Benches of the Supreme Court it would be better that the legislature intervenes and clarifies the legal position by simply amending the definition of "industry". The legislature did respond by amending the definition of "industry" but unfortunately 23 years were not enough for the legislature to provide Alternative Disputes Resolution Forums to the employees of specified categories of industries excluded from the amended definition. The legal position thus continues to be unclear and to a large extent uncovered by the decision of ***Bangalore Water Supply*** case as well.

18. Krishna Iyer, J. himself, who delivered the main judgment in ***Bangalore Water Supply*** case at various places in his opinion expressed that the attempt made by the Court to impart definite meaning to the words in the wide definition of "industry" is only a workable solution until a more precise definition is provided by the legislature. See the following observations:

"*2*. … Our judgment here has no pontifical flavour but seeks to serve the future hour till changes in the law or in industrial culture occur.

3. Law, especially industrial law, which regulates the rights and remedies of the working class, unfamiliar with the sophistications of definitions and shower of decisions, unable to secure expert legal opinion, what with poverty pricing them out of the justice market and denying them the staying power to withstand the multi-

decked litigative process, de facto denies social justice if legal drafting is vagarious, definitions indefinite and court rulings contradictory. *Is it possible, that the legislative chambers are too preoccupied with other pressing business to listen to court signals calling for clarification of ambiguous clauses? A careful, prompt amendment of Section 2(j) would have pre-empted this docket explosion before tribunals and courts*. This Court, perhaps more than the legislative and executive branches, is deeply concerned with law's delays and to devise a prompt delivery system of social justice."(emphasis added)

It is to be noted further that in the order of reference made to the seven-Judge Bench in ***Bangalore Water Supply and Sewerage Board*** case the Judges referring the case had stated thus:

" … the chance of confusion from the crop of cases in an area where the common man has to understand and apply the law makes it desirable that *there should be a comprehensive, clear and conclusive declaration as to what is an industry under the Industrial Disputes Act as it now stands*. Therefore, we think it necessary to place this case before the learned Chief Justice for consideration by a larger Bench. *If in the meantime Parliament does not act, this Court may have to illumine the twilight area of law and help the industrial community carry on smoothly*."(emphasis supplied)

19. In the separate opinion of other Hon'ble Judges in ***Bangalore Water Supply*** case similar observations have been made by this Court to give some precision to the very wide definition of "industry". It was an exercise done with the hope of a suitable legislative change on the subject which all the Judges felt was most imminent and highly desirable. See the following concluding remarks:

"*145*. We conclude with diffidence because Parliament, which has the commitment to the political nation to legislate promptly in vital areas like industry and trade and articulate the welfare expectations in the 'conscience' portion of the Constitution, has hardly intervened to restructure the rather clumsy, vaporous and tall-and-dwarf definition or tidy up the scheme although judicial thesis and antithesis, disclosed in the two-decades-long decisions, should have produced a legislative synthesis becoming of a welfare State and socialistic society, in a world setting where ILO norms are advancing and India needs updating."

20. The separate opinion of Beg, C.J. has the same refrain and he also observes that the question can be solved only by more satisfactory legislation. Chandrachud, C.J. (as he then was) in his separate opinion delivered on 7-4-1978 concurred partly but went a step further in expanding the definition of "industry". He has felt the necessity for legislative intervention at the earliest and has observed thus:

"*175*. But having thus expressed its opinion in a language which left no doubt as to its meaning, the Court went on to observe that though Section 2(*j*) used words of a very wide denotation, 'it is clear' that a *line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings from the scope of the definition*. This was considered necessary because if all the words used in the definition were given their widest meaning, all services and all callings would come

within the purview of the definition including services rendered by a person in a purely personal or domestic capacity or in a casual manner. The Court then undertook for examination what it euphemistically called 'a somewhat difficult' problem to decide and it proceeded to draw a line in order to ascertain what limitations could and should be reasonably implied in interpreting the wide words used in Section 2(*j*). I consider, with great respect, *that the problem is far too policy-oriented to be satisfactorily settled by judicial decisions. Parliament must step in and legislate in a manner which will leave no doubt as to its intention*. That alone can afford a satisfactory solution to the question which has agitated and perplexed the judiciary at all levels."(emphasis added)

21. The dissenting opinion of Justice Jaswant Singh for himself and Tulzapurkar, J. concludes with the following observations:

"*187*. In view of the difficulty experienced by all of us in defining the true denotation of the term 'industry' and divergence of opinion in regard thereto - as has been the case with this Bench also - *we think, it is high time that the legislature steps in with a comprehensive Bill to clear up the fog and remove the doubts and set at rest once for all the controversy which crops up from time to time in relation to the meaning of the aforesaid term rendering it necessary for larger Benches of this Court to be constituted which are driven to the necessity of evolving a working formula to cover particular cases*."(emphasis added)

The above observations contained in the dissenting view of Jaswant Singh, J. have proved prophetic. The legislature has intervened and amended the definition of "industry" in 1982 but for more than 23 years the amended provision not having been brought into force, the unamended definition with the same vagueness and lack of precision continues to confuse the courts and the parties. The inaction of the legislative and executive branches has made it necessary for the judiciary to reconsider the subject over and over again in the light of the experience of the working of the provisions on the basis of the interpretation in the judgment of ***Bangalore Water Supply*** case rendered as far back as in the year 1978.

22. In the case of ***Coir Board* v. *Indira Devai P.S.*** [(1998) 3 SCC 259], a two-Judge Bench of this Court speaking through Sujata Manohar, J. surveyed all previous decisions of this Court including the seven-Judge Bench decision in ***Bangalore Water Supply*** and passed an order of reference to the Chief Justice for constituting a larger Bench of more than seven Judges if necessary. See the following part of that order:

"*24*. Since the difficulty has arisen because of the judicial interpretation given to the definition of 'industry' in the Industrial Disputes Act, there is no reason why the matter should not be judicially re-examined. In the present case, the function of the Coir Board is to promote coir industry, open markets for it and provide facilities to make the coir industry's products more marketable. It is not set up to run any industry itself. Looking to the predominant purpose for which it is set up we would not call it an industry. However, if one were to apply the tests laid down by ***Bangalore Water Supply and Sewerage Board*** case, it is an organisation where there are employers and employees. The organisation does some useful work for the

benefit of others. Therefore, it will have to be called an industry under the Industrial Disputes Act.

25. We do not think that such a sweeping test was contemplated by the Industrial Disputes Act, nor do we think that every organisation which does useful service and employs people can be labelled as industry. We, therefore, direct that the matter be placed before the Hon'ble Chief Justice of India to consider whether a larger Bench should be constituted to reconsider the decision of this Court in ***Bangalore Water Supply and Sewerage Board.***"

23. When the matter was listed before a three-Judge Bench [in the case of ***Coir Board* v. *Indira Devai P.S.,*** (2000) 1 SCC 224] the request for constituting a larger Bench for reconsideration of the judgment in ***Bangalore Water Supply*** case was refused both on the ground that the Industrial Disputes Act has undergone an amendment and that the matter does not deserve to be referred to a larger Bench as the decision of seven Judges in ***Bangalore Water Supply*** case is binding on Benches of this Court of less than seven Judges. The order refusing reference of the seven-Judge Bench decision by the three-Judge Bench in ***Coir Board* v. *Indira Devai P.S.*** reads thus:

"*1*. We have considered the order made in Civil Appeals Nos. 1720-21 of 1990. The judgment in ***Bangalore Water Supply & Sewerage Board* v. *A. Rajappa*** was delivered almost two decades ago and the law has since been amended pursuant to that judgment though the date of enforcement of the amendment has not been notified.

2. The judgment delivered by seven learned Judges of this Court in ***Bangalore Water Supply*** case does not, in our opinion, require any reconsideration on a reference being made by a two-Judge Bench of this Court, which is bound by the judgment of the larger Bench.

3. The appeals, shall, therefore, be listed before the appropriate Bench for further proceedings."

Thus, the reference sought by the two Judges to a larger Bench of more than seven Judges was declined by the three-Judge Bench. As has been held by this Court subsequently in the case of ***Central Board of Dawoodi Bohra Community* v. *State of Maharashtra*** [(2005) 2 SCC 673] it was open to the Chief Justice on a reference made by two Hon'ble Judges of this Court, to constitute a Bench of more than seven Judges for reconsideration of the decision in ***Bangalore Water Supply*** case.

24. In any case, no such inhibition limits the power of this Bench of five Judges which has been constituted on a reference made due to apparent conflict between judgments of two Benches of this Court. As has been stated by us above, the decision in ***Bangalore Water Supply*** is not a unanimous decision. Of the five Judges who constituted the majority, three have given a common opinion but two others have given separate opinions projecting a view partly different from the views expressed in the opinion of the other three Judges. Beg, C.J. having retired had no opportunity to see the opinions delivered by the other Judges subsequent to his retirement. Krishna Iyer, J. and the two Judges who spoke through him did not have the benefit of the dissenting opinion of the other two Judges and the separate partly

dissenting opinion of Chandrachud, J., as those opinions were prepared and delivered subsequent to the delivery of the judgment in ***Bangalore Water Supply*** case.

25. In such a situation, it is difficult to ascertain whether the opinion of Krishna Iyer, J. given on his own behalf and on behalf of Bhagwati and Desai, JJ., can be held to be an authoritative precedent which would require no reconsideration even though the Judges themselves expressed the view that the exercise of interpretation done by each one of them was tentative and was only a temporary exercise till the legislature stepped in. The legislature subsequently amended the definition of the word "industry" but due to the lack of will both on the part of the legislature and the executive, the amended definition, for a long period of 23 years, has remained dormant.

26. Shri Andhyarujina, learned Senior Counsel appearing for M/s National Remote Sensing Agency, which is an agency constituted by the Government in discharge of its sovereign functions dealing with defence, research, atomic energy and space falling in the excluded category in sub-clause (6) of the amended definition of "industry" in Section 2(*j*), relies on the following decisions in support of his submission that where the unamended definition in the Act is ambiguous and has been interpreted by the Court not exhaustively but tentatively until the law is amended, the amendment actually brought into the statute can be looked at for construction of the unamended provisions.

27. Shri Andhyarujina further argues that by the Industrial Disputes (Amendment) Act of 1982, not only was the definition of "industry" as provided in the clause amended but various other provisions of the principal Act were also amended. Sub-section (2) of Section 1 of the Amendment Act states that the Act "shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint". It is submitted that either the whole of the Act should have been notified for enforcement or not at all. The Amendment Act does not contemplate a situation where the Central Government may notify only some of the provisions of the Amendment Act for enforcement and withhold from enforcement other provisions of the Amendment Act. It is argued that such piecemeal enforcement of the Act is not permissible by sub-section (2) of Section 1 of the Amendment Act. Bennion: ***Statutory Interpretation***, 3rd Edn. is relied on in support of the submission that when the Amendment Act mandates the Central Government to issue a notification specifying the date on which the provisions of the Act should be brought into force, such enabling provision implies that the enforcement of the Act has to be done within *a reasonable time*. Failure to enforce the Act for a period of more than 23 years is an unconstitutional attempt by the executive branch of the State to frustrate the clear intention of the legislature. Reliance has been placed by Senior Advocate Shri Andhyarujina, on the Court of Appeal decision in ***R.* v. *Secy. of State for the Home Deptt., ex p Fire Brigades Union*** [(1995)1 All ER 888] which was upheld by the House of Lords in the decision reported in the same volume. It was held in that case thus:

> "Having regard to the overriding legislative role of Parliament, the enacted provisions represented a detailed scheme approved by the legislature which until repealed stood as an enduring statement of its will; that while the provisions remained unrepealed it was not open to the Secretary of State to introduce a radically different scheme under his prerogative powers; and that, accordingly, in purporting to implement the tariff scheme, he had acted unlawfully and in abuse of those powers."

The House of Lords in approving the decision of the Court of Appeal held:

> "That Section 171(1) of the Criminal Justice Act, 1988 imposed a continuing obligation on the Secretary of State to consider whether to bring the statutory scheme in Sections 108 to 117 into force; that he could not lawfully bind himself not to exercise the discretion conferred on him; that the tariff scheme was inconsistent with the statutory scheme; and that, accordingly, the Secretary of State's decision not to bring Sections 108 to 117 into force and to introduce the tariff scheme in their place had been unlawful."

28. Senior Advocates Ms Indira Jaising and Mr Colin Gonsalves, counsel appearing for the employees, very vehemently oppose the prayer made on behalf of the employers for referring the matter to a larger Bench for reconsideration of the decision in ***Bangalore Water Supply*** case. It is submitted that even though the definition in the Industrial Disputes Act has been amended in 1982, it has not been brought into force for more than 23 years and the reasons disclosed to the Court, when the enforcement of the Amendment Act was sought in the case of ***Aeltemesh Rein* v. *Union of India*** is a sound justification. The stand of the Union of India was that for the category of industries excluded in the amended definition no Alternative Industrial Disputes Resolution Forums could be created. For the aforesaid reason the Central Government did not enforce the provisions of the Amendment Act which provided a new and restrictive definition of "industry". Learned counsel on behalf of the employees relied on ***A.K. Roy* v. *Union of India*** [(1982) 1 SCC 271] in support of their submissions that it is not open to the court to issue a mandamus to the Government to bring into force the provisions of an Act. It is submitted that it is the prerogative of the Government in accordance with the provisions of sub-section (2) of Section 1 of the Amendment Act to enforce the provisions of the Act when it finds that there are conditions suitable to take out of the purview of the definition of "industry" certain categories of "industries" in which the employees have been provided separate forums for redressal of their industrial disputes.

29. For the purpose of these cases, we need not go into the aforesaid side issue because neither is there any substantive petition nor has a prayer been made in any of the cases before us seeking issuance of mandamus to the Government to publish notification in the Official Gazette for enforcement of the amended definition of "industry" as provided in the Amendment Act of 1982. The only question before us is as to whether the amended definition, which is now undoubtedly a part of the statute, although not enforced, is a relevant piece of subsequent legislation which can be taken aid of to amplify or restrict the ambit of the definition of "industry" in Section 2(*j*) of the Act as it stands in its original form.

30. On behalf of the employees, it is submitted that pursuant to the decision in ***Bangalore Water Supply*** case although the legislature responded by amending the definition of "industry" to exclude certain specified categories of industries from the purview of the Act, employees of the excluded categories of industries could not be provided with alternative forums for redressal of their grievances. The unamended definition of industry, as interpreted by ***Bangalore Water Supply*** case has been the settled law of the land in the industrial field. The settled legal position, it is urged, has operated well and no better enunciation of scope and effect of the "definition" could be made either by the legislature or by the Indian Labour Organisation in its report.

31. After hearing learned counsel for the contesting parties, we find there are compelling reasons more than one before us for making a reference on the interpretation of the definition of "industry" in Section 2(*j*) of the Act, to a larger Bench and for reconsideration by it, if necessary, of the decision rendered in the case of ***Bangalore Water Supply & Sewerage Board***. The larger Bench will have to necessarily go into all legal questions in all dimensions and depth. We briefly indicate why we find justification for a reference although it is stiffly opposed on behalf of the employees.

32. In the judgment of ***Bangalore Water Supply,*** Krishna Iyer, J. speaking for himself and on behalf of the other two Hon'ble Judges agreeing with him proceeded to deal with the interpretation of the definition of "industry" on a legal premise stating thus:

> "*A worker-oriented statute must receive a construction where, conceptually, keynote thought must be the worker and the community, as the Constitution has shown concern for them, inter alia, in Articles 38,39 and 43."*

33. With utmost respect, the statute under consideration cannot be looked at only as a worker-oriented statute. The main aim of the statute as is evident from its preamble and various provisions contained therein, is to regulate and harmonise relationships between employers and employees for maintaining industrial peace and social harmony. The definition clause read with other provisions of the Act under consideration deserves interpretation keeping in view interests of the employer, who has put his capital and expertise into the industry and the workers who by their labour equally contribute to the growth of the industry. The Act under consideration has a historical background of industrial revolution inspired by the philosophy of Karl Marx. It is a piece of social legislation. Opposed to the traditional industrial culture of open competition or *laissez faire*, the present structure of industrial law is an outcome of long-term agitation and struggle of the working class for participation on equal footing with the employers in industries for its growth and profits. In interpreting, therefore, the industrial law, which aims at promoting social justice, interests both of employers, employees and in a democratic society, people, who are the ultimate beneficiaries of the industrial activities, have to be kept in view.

34. Ms Indira Jaising fervently appealed that in interpreting industrial law in India which is obliged by the Constitution to uphold democratic values, as has been said in some other judgment by Krishna Iyer, J. "the court should be guided not by 'Maxwell' but 'Gandhi' who advocated protection of the interest of the weaker sections of the society as the prime concern in democratic society. In the legal field, the court has always derived guidance from the immortal saying of the great Judge Oliver W. Holmes that 'the life of law has never been logic, it has been experience'." The spirit of law is not to be searched in any ideology or philosophy which might have inspired it but it may be found in the experience of the people who made and put it into practice.

35. In the case of ***Coir Board-I,*** Sujata V. Manohar, J., speaking for the Bench while passing an order of reference to the larger Bench for reconsideration of the judgment of ***Bangalore Water Supply & Sewerage Board*** has observed thus:

> "*19*. Looking to the uncertainty prevailing in this area and in the light of the experience of the last two decades in applying the test laid down in the case of

> ***Bangalore Water Supply & Sewerage Board*** it is necessary that the decision in ***Bangalore Water Supply & Sewerage Board*** case is re-examined. The experience of the last two decades does not appear to be entirely happy. Instead of leading to industrial peace and welfare of the community (which was the avowed purpose of artificially extending the definition of industry), the application of the Industrial Disputes Act to organisations which were, quite possibly, not intended to be so covered by the machinery set up under the Industrial Disputes Act, might have done more damage than good, not merely to the organisations but also to employees by the curtailment of employment opportunities."

The abovequoted observations were criticised on behalf of the employees stating that for making them, there was no material before the Court. We think that the observations of the learned Judges are not without foundation. The experience of Judges in the Apex Court is not derived from the case in which the observations were made. The experience was from the cases regularly coming to this Court through the Labour Courts. It is experienced by all dealing in industrial law that overemphasis on the rights of the workers and undue curtailment of the rights of the employers to organise their business, through employment and non-employment, has given rise to a large number of industrial and labour claims resulting in awards granting huge amounts of back wages for past years, allegedly as legitimate dues of the workers, who are found to have been illegally terminated or retrenched. Industrial awards granting heavy packages of back wages, sometimes result in taking away the very substratum of the industry. Such burdensome awards in many cases compel the employer having moderate assets to close down industries causing harm to interests of not only the employer and the workers but also the general public who is the ultimate beneficiary of material goods and services from the industry. The awards of reinstatement and arrears of wages for past years by Labour Courts by treating even small undertakings of employers and entrepreneurs as industries is experienced as a serious industrial hazard particularly by those engaged in private enterprises. The experience is that many times idle wages are required to be paid to the worker because the employer has no means to find out whether and where the workman was gainfully employed pending adjudication of industrial dispute raised by him. Exploitation of workers and the employers has to be equally checked. Law and particularly industrial law needs to be so interpreted as to ensure that neither the employers nor the employees are in a position to dominate the other. Both should be able to cooperate for their mutual benefit in the growth of industry and thereby serve public good. An over-expansive interpretation of the definition of "industry" might be a deterrent to private enterprise in India where public employment opportunities are scarce. The people should, therefore, be encouraged towards self-employment. To embrace within the definition of "industry" even liberal professions like lawyers, architects, doctors, chartered accountants and the like, which are occupations based on talent, skill and intellectual attainments, is experienced as a hurdle by professionals in their self-pursuits. In carrying on their professions, if necessarily, some employment is generated, that should not expose them to the rigors of the Act. No doubt even liberal professions are required to be regulated and reasonable restrictions in favour of those employed for them can, by law, be imposed, but that should be the subject of a separate suitable legislation.

36. If we adopt an ideological or philosophical approach, we would be treading on the wrong path against which learned Shri Justice Krishna Iyer himself recorded a caution in his inimitable style thus: [***Bangalore Water Supply*** case]

> "Here we have to be cautious not to fall into the trap of definitional expansionism bordering on *reduction ad absurdum* nor to truncate the obvious amplitude of the provision to fit it into our mental mould of beliefs and prejudices or social philosophy conditioned by class interests. Subjective wish shall not be father to the forensic thought, if credibility with a pluralist community is a value to be cherished. 'Courts do not substitute their social and economic beliefs for the judgment of legislative bodies'." (emphasis in original)

37. A worker-oriented approach in construing the definition of industry, unmindful of the interest of the employer or the owner of the industry and the public who are the ultimate beneficiaries, would be a one-sided approach and not in accordance with the provisions of the Act.

38. We also wish to enter a caveat on confining "sovereign functions" to the traditional so described as "inalienable functions" comparable to those performed by a monarch, a ruler or a non-democratic government. The learned Judges in ***Bangalore Water Supply & Sewerage Board*** case seem to have confined only such sovereign functions outside the purview of "industry" which can be termed strictly as constitutional functions of the three wings of the State i.e. executive, legislature and judiciary. The concept of sovereignty in a constitutional democracy is different from the traditional concept of sovereignty which is confined to "law and order", "defence", "law-making" and "justice dispensation". In a democracy governed by the Constitution the sovereignty vests in the people and the State is obliged to discharge its constitutional obligations contained in the directive principles of State policy in Part IV of the Constitution of India. From that point of view, wherever the Government undertakes public welfare activities in discharge of its constitutional obligations, as provided in Part IV of the Constitution, such activities should be treated as activities in discharge of sovereign functions falling outside the purview of "industry". Whether employees employed in such welfare activities of the Government require protection, apart from the constitutional rights conferred on them, may be a subject of separate legislation but for that reason, such governmental activities cannot be brought within the fold of industrial law by giving an undue expansive and wide meaning to the words used in the definition of industry.

39. In response to ***Bangalore Water Supply & Sewerage Board*** case Parliament intervened and substituted the definition of "industry" by including within its meaning some activities of the Government and excluding some other specified governmental activities and "public utility services" involving sovereign functions. For the past 23 years, the amended definition has remained unenforced on the statute-book. The Government has been experiencing difficulty in bringing into effect the new definition. Issuance of notification as required by sub-section (2) of Section 1 of the Amendment Act, 1982 has been withheld so far. It is, therefore, high time for the court to re-examine the judicial interpretation given by it to the definition of "industry". The legislature should be allowed greater freedom to come forward with a more comprehensive legislation to meet the demands of employers and employees in the public and private sectors. The inhibition and the difficulties which are

being exercised (*sic* experienced) by the legislature and the executive in bringing into force the amended industrial law, more due to judicial interpretation of the definition of "industry" in ***Bangalore Water Supply & Sewerage Board*** case need to be removed. The experience of the working of the provisions of the Act would serve as a guide for a better and more comprehensive law on the subject to be brought into force without inhibition.

40. The word "industry" seems to have been redefined under the Amendment Act keeping in view the judicial interpretation of the word "industry" in the case of ***Bangalore Water Supply***. Had there been no such expansive definition of "industry" given in ***Bangalore Water Supply*** case it would have been open to Parliament to bring in either a more expansive or a more restrictive definition of industry by confining it or not confining it to industrial activities other than sovereign functions and public welfare activities of the State and its departments. Similarly, employment generated in carrying on of liberal professions could be clearly included or excluded depending on social conditions and demands of social justice. Comprehensive change in law and/or enactment of new law had not been possible because of the interpretation given to the definition of "industry" in ***Bangalore Water Supply*** case. The judicial interpretation seems to have been one of the inhibiting factors in the enforcement of the amended definition of the Act for the last 23 years.

41. In ***Bangalore Water Supply*** case not all the Judges in interpreting the definition clause invoked the doctrine of *noscitur a sociis*. We are inclined to accept the view expressed by the six-Judge Bench in the case of ***Safdarjung Hospital*** that keeping in view the other provisions of the Act and words used in the definition clause, although "profit motive" is irrelevant, in order to encompass the activity within the word "industry", the activity must be "*analogous to trade or business in a commercial sense*". We also agree that the mere enumeration of "public utility services" in Section 2(*n*) read with the First Schedule should not be held decisive. Unless the public utility service answers the test of it being an "industry" as defined in clause (*j*) of Section 2, the enumeration of such public utility service in the First Schedule to the Act would not make it an "industry". The six Judges also considered the inclusion of services such as hospitals and dispensaries as public utility services in the definition under Section 2(*n*) of the Act and rightly observed thus: (SCC p.746, para 29)

> "*29*. When Parliament added the sixth clause under which other services could be brought within the protection afforded by the Act to public utility services, it did not intend that the entire concept of industry in the Act, could be ignored and anything brought in. Therefore, it said that an industry could be declared to be a public utility service. But what could be so declared had to be an industry in the first place."

The decision in the case of ***Safdarjung Hospital*** was a unanimous decision of all the six Judges and we are inclined to agree with the following observations in the interpretation of the definition clause:

> "But in the collocation of the terms and their definitions these terms have a definite economic content of a particular type and on the authorities of this Court have been uniformly accepted as excluding professions and are only concerned with the production, distribution and consumption of wealth and the production and availability of material services. Industry has thus been accepted to mean only trade

and business, manufacture, or *undertaking analogous to trade or business for the production of material goods or wealth and material services*."(emphasis supplied)

The six Judges unanimously upheld the observations in ***Gymkhana Club*** case:

"… before the work engaged in can be described as an industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services."

42. In construing the definition clause and determining its ambit, one has not to lose sight of the fact that in activities like hospitals and education, concepts like right of the workers to go on "strike" or the employer's right to "close down" and "lay off" are not contemplated because they are services in which the motto is "service to the community". If the patients or students are to be left to the mercy of the employer and employees exercising their rights at will, the very purpose of the service activity would be frustrated.

43. We are respectfully inclined to agree with the observations of Shri Justice P.B. Gajendragadkar in the case of ***Harinagar Cane Farm***:

"As we have repeatedly emphasised, in dealing with industrial matters, industrial adjudication should refrain from enunciating any general principles or adopting any doctrinaire considerations. It is desirable that industrial adjudication should deal with problems as and when they arise and confine its decisions to the points which strictly arise on the pleadings between the parties."

44. We conclude agreeing with the conclusion of the Hon'ble Judges in the case of ***Hospital Mazdoor Sabha***:

"[T]hough Section 2(*j*) used words of very wide denotation, *a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings*."(emphasis supplied)

This Court must, therefore, reconsider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in Section 2(*j*). That no doubt is rather a difficult problem to resolve more so when both the legislature and the executive are silent and have kept an important amended provision of law dormant on the statute-book.

45. We do not consider it necessary to say anything more and leave it to the larger Bench to give such meaning and effect to the definition clause in the present context with the experience of all these years and keeping in view the amended definition of "industry" kept dormant for long 23 years. Pressing demands of the competing sectors of employers and employees and the helplessness of the legislature and the executive in bringing into force the Amendment Act compel us to make this reference.

46. Let the cases be now placed before Hon'ble Chief Justice of India for constituting a suitable larger Bench for reconsideration of the judgment of this Court in the case of ***Bangalore Water Supply***.

* * * * *

Workmen of Dimakuchi Tea Estate v. *Dimakuchi Tea Estate*

AIR 1958 SC 353 : 1958 SCR 1156

S.K. DAS, J. - 2. The appellants before us are the workmen of the Dimakuchi Tea Estate represented by the Assam Chah Karmachari Sangha, Dibrugarh. The respondent is the management of the Dimakuchi tea estate, District Darrang in Assam. One Dr K.P. Banerjee was appointed Assistant Medical Officer of the Dimakuchi tea estate with effect from November 1, 1950. He was appointed subject to a satisfactory medical report and on probation for three months. It was stated in his letter of appointment: "While you are on probation or trial, your suitability for permanent employment will be considered. If during the period of probation you are considered unsuitable for employment, you will receive seven days' notice in writing terminating your appointment. If you are guilty of misconduct, you are liable to instant dismissal. At the end of the period of probation, if you are considered suitable, you will be confirmed in the garden's service." In February 1951 Dr Banerjee was given an increment of Rs 5 per mensem, but on April 21, Dr Banerjee received a letter from one Mr Booth, Manager of the tea estate, in which it was stated: "It has been found necessary to terminate your services with effect from the 22nd instant. You will of course receive one month's salary in lieu of notice." As no reasons were given in the notice of termination, Dr Banerjee wrote to the Manager to find out why his services were being terminated. To this Dr Banerjee received a reply to this effect: "The reasons for your discharge are on the medical side, which are outside my jurisdiction, best known to Dr Cox but a main reason is because of the deceitful manner in which you added figures to the requirements of the last medical indent after it had been signed by Dr Cox, evidence of which is in my hands."

(O)n December 23, 1953, the Government of Assam published a notification in which it was stated that whereas an industrial dispute had arisen between the appellants and the respondent herein and whereas it was expedient that the dispute should be referred for adjudication to a tribunal constituted under Section 7 of the Act, the Governor of Assam was pleased to refer the dispute to Shri U.K. Gohain, Additional District and Sessions Judge, under clause (*c*) of sub-Section (1) of Section 10 of the Act. The dispute which was thus referred to the Tribunal was described in these terms:

> "(*i*) Whether the management of Dimakuchi Tea Estate was justified in dismissing Dr K.P. Banerjee, A.M.O?
>
> (*ii*) If not, is he entitled to reinstatement or any other relief in lieu thereof?"

6. (T)he question whether Dr K.P. Banerjee is or is not a workman within the meaning of the Act is no longer open to the parties and we must proceed on the footing that Dr K.P. Banerjee was not a workman within the meaning of the Act and then decide the question if the dispute in relation to the termination of his service still fell within the scope of the definition of the expression "industrial dispute" in the Act.

8. (T)he question is whether a dispute in relation to a person who is not a workman within the meaning of the Act still falls within the scope of the definition clause in Section 2(*k*). If we analyse the definition clause it falls easily and naturally into three parts: first, there must be a dispute or difference; second, the dispute or difference must be between employers and

employers, or between employers and workmen or between workmen and workmen; third, the dispute or difference must be connected with the employment or non-employment or the terms of employment or with the conditions of labour, *of any person*. The first part obviously refers to the factum of a real or substantial dispute; the second part to the parties to the dispute; and the third to the subject-matter of that dispute. That subject-matter may relate to any of two matters - (*i*) employment or non-employment, and (*ii*) terms of employment or conditions of labour, of any person. On behalf of the appellants it is contended that the conditions referred to in the first and second parts of the definition clause are clearly fulfilled in the present case, because there is a dispute or difference over the termination of service of Dr K.P. Banerjee and the dispute or difference is between the employer, namely, the management of the Dimakuchi tea estate on one side, and its workmen on the other, even taking the expression "workmen" in the restricted sense in which that expression is defined in the Act. The real difficulty arises when we come to the third part of the definition clause. Learned counsel for the appellants has submitted that the expression "of any person" occurring in the third part of the definition clause is an expression of very wide import and there are no reasons why the words "any person" should be equated with "any workman", as the tribunals below have done. The argument is that inasmuch as the dispute or difference between the employer and the workmen is connected with the non-employment of a person called Dr K.P. Banerjee (even though he was not a workman), the dispute is an industrial dispute within the meaning of the definition clause. At first sight, it does appear that there is considerable force in the argument advanced on behalf of the appellants. It is rightly pointed out that the definition clause does not contain any words of qualification or restriction in respect of the expression "any person" occurring in the third part, and if any limitations as to its scope are to be imposed, they must be such as can be reasonably inferred from the definition clause itself or other provisions of the Act.

9. A little careful consideration will show, however, that the expression "any person" occurring in the third part of the definition clause cannot mean anybody and everybody in this wide world. First of all, the subject-matter of dispute must relate to (*i*) employment or non-employment or (*ii*) terms of employment or conditions of labour of any person; these necessarily import a limitation in the sense that a person in respect of whom the employer-employee relation *never existed* or *can never possibly exist* cannot be the subject-matter of a dispute between employers and workmen.

11. Thus, an examination of the salient provisions of the Act shows that the principal objects of the Act are -

(*1*) the promotion of measures for securing and preserving amity and good relations between the employer and workmen;

(*2*) an investigation and settlement of industrial disputes, between employers and employers, employers and workmen, or workmen and workmen, with a right of representation by a registered trade union or federation of trade unions or association of employers or a federation of associations of employers;

(*3*) prevention of illegal strikes and lock-outs;

(*4*) relief to workmen in the matter of lay-off and retrenchment; and

(*5*) collective bargaining.

The Act is primarily meant for regulating the relations of employers and workmen — past, present and future. It draws a distinction between "workmen" as such and the managerial or supervisory staff, and confers benefit on the former only.

12. It is in the context of all these provisions of the Act that the definition clause in Section 2(*k*) has to be interpreted. It seems fairly obvious to us that if the expression "any person" is given its ordinary meaning, then the definition clause will be so wide as to become inconsistent not merely with the objects and other provisions of the Act, but also with the other parts of that very clause. Let us see how the definition clause works if the expression "any person" occurring therein is given its ordinary meaning. The workmen may then raise a dispute about a person with whom they have no possible community of interest; they may raise a dispute about the employment of a person in another industry or a different establishment - a dispute in which their own employer is not in a position to give any relief, in the matter of employment or non-employment or the terms of employment or conditions of labour of such a person. In order to make our meaning clear, we may take a more obvious example. Let us assume that for some reason or other the workmen of a particular industry raise a dispute with their employer about the employment or terms of employment of the District Magistrate or District Judge of the district in which the industry is situate. It seems clear to us that though the District Magistrate or District Judge undoubtedly comes within the expression "any person" occurring in the definition clause, a dispute about his employment or terms of employment is not an industrial dispute; firstly, because such a dispute does not come within the scope of the Act, having regard to the definition of the words "employer", "industry", and "workman" and also to other provisions of the Act; secondly, there is no possible community of interest between the District Magistrate or District Judge on the one hand and the disputants, employer and workmen, on the other. The absurd results that will follow such an interpretation have been forcefully expressed by Chagla, C.J., in his decision in ***Narendra Kumar Sen*** **v.** ***All India Industrial Disputes (Labour Appellate) Tribunal*** [(1953) 55 Bom LR 125]:

> "If 'any person' were to be read as an expression without any limitation and qualification whatsoever, then we must not put even any territorial restriction on that expression. In other words, it would be open to the workmen not only to raise a dispute with regard to the terms of employment of persons employed in the same industry as themselves, not only to raise a dispute with regard to the terms of employment in corresponding or similar industries, not only a dispute with regard to the terms of employment of people employed in our country, but the terms of employment of any workman or any labourer anywhere in the world. The proposition has only to be stated in order to make one realise how entirely untenable it is."

Take, for example, another case where the workmen raise an objection to the salary or remuneration paid to a Manager or Chief Medical Officer by the employer but without claiming any benefit for themselves, and let us assume that a dispute or difference arises between the workmen on one side and the employer on the other over such an objection. If such a dispute comes within the definition clause and is referred to an Industrial Tribunal for adjudication, the parties to the dispute will be the employer on one side and his workmen on the other. The Manager or the Chief Medical Officer cannot obviously be a party to the

dispute, because he is not a "workman" within the meaning of the Act and there is no dispute between him and his employer. That being the position, the award, if any, given by the Tribunal will be binding, under clause (*a*) of Section 18, on the parties to the dispute and not on the Manager or the Chief Medical Officer. It is extremely doubtful if in the circumstances stated the Tribunal can summon the Manager or the Chief Medical Officer as a party to the dispute, because there is no dispute between the Manager or Chief Medical Officer on one aide and his employer on the other. Furthermore, Section 36 of the Act does not provide for representation of a person who is not a party to the dispute. If, therefore, an award is made by the Tribunal in the case which we have taken by way of illustration, that award, though binding on the employer, will not be binding on the Manager or Chief Medical Officer. It should be obvious that the Act could not have contemplated an eventuality of this kind, which does not promote any of the objects of the Act, but rather goes against them.

13. When these difficulties were pointed out to learned counsel for the appellants, he conceded that some limitations must be put on the width of the expression "any person" occurring in the definition clause. He formulated four such limitations:

(*1*) The dispute must be a real and substantial one in respect of which one of the parties to the dispute can give relief to the other; e.g. when the dispute is between workmen and employer, the employer must be in a position to give relief to the workmen. This, according to learned counsel for the appellants, will exclude those cases in which the workmen ask for something which their employer is not in a position to give. It would also exclude mere ideological differences or controversies.

(*2*) The industrial dispute if raised by workmen must relate to the particular establishment or part of establishment in which the workmen are employed so that the definition clause may be consistent with Section 18 of the Act.

(*3*) The dispute must relate to the employment, non-employment or the terms of employment or with the conditions of labour of any person, but such person must be an employee discharged or in service or a candidate for employment. According to learned counsel for the appellants, the person about whom the dispute has arisen, need not be a workman within the meaning of the Act, but he must answer to the description of an employee, discharged or in service, or a candidate for employment.

(*4*) The workmen raising the dispute must have a nexus with the dispute, either because they are personally interested or because they have taken up the cause of another person in the general interest of labour welfare. The further argument of learned counsel for the appellants is that even imposing the aforesaid four limitations on the width of the expression "any person" occurring in the definition clause, the dispute in the present case is an industrial dispute within the meaning of Section 2(*k*) of the Act, because (1) the employer could give relief in the matter of the termination of service of Dr K.P. Banerjee, (2) Dr K.P. Banerjee belonged to the same establishment, namely, the same tea garden, (3) the dispute related to a discharged employee (though not a workman) and (4) the workmen raising the dispute were vitally interested in it by reason of the fact that Dr Banerjee (it is stated) belonged to their trade union and the dismissal of an employee

without the formulation of a charge and without giving him an opportunity to meet any charge was a matter of general interest to all workmen in the same establishment.

14. We now propose to examine the question whether the limitations formulated by learned counsel for the appellants are the only true limitations to be imposed with regard to the definition clause. In doing so we shall also consider what is the true scope and effect of the definition clause and what are the correct tests to be applied with regard to it. We think that there is no real difficulty with regard to the first two limitations. They are, we think, implicit in the definition clause itself. It is obvious that a dispute between employers and employers, employers and workmen, or between workmen and workmen must be a real dispute capable of settlement or adjudication by directing one of the parties to the dispute to give necessary relief to the other. It is also obvious that the parties to the dispute must be directly or substantially interested therein, so that if workmen raise a dispute, it must relate to the establishment or part of establishment in which they are employed. With regard to limitation (3), while we agree that the expression "any person" cannot be completely equated with "any workman" as defined in the Act, we think that the limitation formulated by learned counsel for the appellants is much too widely stated and is not quite correct. We recognise that if the expression "any person" means "any workman" within the meaning of the Act, then it is difficult to understand why the legislature instead of using the expression "any workman" used the much wider expression "any person" in the third part of the definition clause. The very circumstance that in the second part of the definition clause the expression used is "between employers and workmen or between workmen and workmen" while in the third part the expression used is "any person" indicates that the expression "any person" cannot be completely equated with "any workman". The reason for the use of the expression "any person" in the definition clause is, however, not far to seek. The word "workman" as defined in the Act (before the amendments of 1956) included, for the purposes of any proceedings under the Act in relation to an industrial dispute, a workman *discharged during the dispute.* This definition corresponded to Section 2(*j*) of the old Trade Disputes Act, 1929 except that the words "including an apprentice" were inserted and the words "industrial dispute" were substituted for the words "trade dispute". It is worthy of note that in the Trade Disputes Act, 1929, the word "workman" meant any person employed in any trade or industry to do any skilled or unskilled manual or clerical work for hire or reward. It is clear enough that prior to 1956 when the definition of "workman" in the Act was further widened to include a person dismissed, discharged or retrenched in connection with, or as a consequence of the dispute or whose dismissal, discharge or retrenchment led to the dispute, a workman who had been discharged earlier and not during the dispute was not a workman within the meaning of the Act. If the expression "any person" in the third part of the definition clause were to be strictly equated with "any workman", then there could be no industrial dispute, prior to 1956, with regard to a workman who had been discharged earlier than the dispute, even though the discharge itself had led to the dispute. That seems to be the reason why the legislature used the expression "any person" in the third part of the definition clause so as to put it beyond any doubt that the non-employment of such a dismissed workman was also within the ambit of an industrial dispute. There was a wide gap between a "workman" and an "employee" under the definition of the word "workman" in Section 2(*s*) as it stood prior to 1956; all existing workmen were no doubt employees; but all employees were not workmen. The supervisory

staff did not come within the definition. The gap has been reduced to some extent by the amendments of 1956; part of the supervisory staff (who draw wages not exceeding five hundred rupees per mensem) and those who were otherwise workmen but were discharged or dismissed earlier have also come within the definition. If and when the gap is completely bridged, "workmen" will be synonymous with "employees", whether engaged in any skilled or unskilled manual, supervisory, technical or clerical work etc. But till the gap is completely obliterated, there is a distinction between workmen and non-workmen and that distinction has an important bearing on the question before us. Limitation (3) as formulated by learned counsel for the appellants ignores the distinction altogether and equates "any person" with "any employee" - past, present or future: this we do not think is quite correct or consistent with the other provisions of the Act. The Act avowedly gives a restricted meaning to the word "workman" and almost all the provisions of the Act are intended to confer benefits on that class of persons who generally answer to the description of workmen. The expression "any person" in the definition clause means, in our opinion, a person in whose employment, or non-employment, or terms of employment, or conditions of labour the workmen as a class have a direct or substantial interest — with whom they have, under the scheme of the Act, a community of interest. Our reason for so holding is not merely that the Act makes a distinction between workmen and non-workmen, but because a dispute to be a real dispute must be one in which the parties to the dispute have a direct or substantial interest. Can it be said that workmen as a class are directly or substantially interested in the employment, non-employment, terms of employment or conditions of labour of persons who belong to the supervisory staff and are, under the provisions of the Act, non-workmen on whom the Act has conferred no benefit, who cannot by themselves be parties to an industrial dispute and for whose representation the Act makes no particular provision? We venture to think that the answer must be in the negative. Limitation (4) formulated by learned counsel for the appellants is also too generally stated. We recognise that solidarity of labour or general interest of labour welfare may furnish, in some cases, the necessary nexus of direct or substantial interest in a dispute between employers and workmen, but the principle of solidarity of the labour movement or general welfare of labour must be based on or correlated to the principle of community of interest; the workmen can raise a dispute in respect of those persons only in the employment or non-employment or the terms of employment or the conditions of labour of whom they have a direct or substantial interest. We think that Chagla, C.J., correctly put the crucial test when he said in ***Narendra Kumar Sen* v. *All India Industrial Disputes* (*Labour Appellate*) *Tribunal*:**

> "Therefore, when Section 2(*k*) speaks of the employment or non-employment or the terms of employment or the conditions of labour of any person, it can only mean the employment or non-employment or the terms of employment or the conditions of labour of only those persons in the employment or non-employment or the terms of employment or with the conditions of labour of whom the workmen themselves are directly and substantially interested. If the workmen have no direct or substantial interest in the employment or non-employment of a person or in his terms of employment or his conditions of labour, then an industrial dispute cannot arise with regard to such person."

19. More in point is the decision of the Full Bench of the Labour Appellate Tribunal in a number of appeals reported in 1952 *Labour Appeal Cases*, p. 198, where the question now before us arose directly for decision. The same question arose for decision before the All India Industrial Tribunal (Bank Disputes) and the majority of members (Messrs. K.C. Sen and J.N. Majumdar) expressed the view that a dispute between employers and workmen might relate to employment or non-employment or the terms of employment or conditions of labour of persons who were not workmen, and the words "any person" used in the definition clause were elastic enough to include an officer, that is, a member of the supervisory staff. The majority view will be found in Chapter X of the Report. The minority view was expressed by Mr N. Chandrasekhara Aiyar, who said:

> "It is fairly clear to my mind that 'any person' in the Act means any one who belongs to the employer class or the workmen class and the cases in whose favour or against whom can be said to be adequately presented by the group or category of persons to which he belongs.
>
> As stated already it should be remembered that the cases relied upon for the view that 'any person' may mean others also besides the workmen were all cases relating to workmen. They were discharged or dismissed workmen and when their cases were taken up by the Tribunal the point was raised that they had ceased to be workmen and were therefore outside the scope of the Act. This argument was repelled.
>
> In my opinion, there is no justification for treating such cases as authorities for the wider proposition that a valid industrial dispute can be raised by workmen about the employment or non-employment of someone else who does not belong and never belonged to their class or category.
>
> My view therefore is that the Act does not apply to cases of non-workmen, or officers, if they may be so called."

Both these views as also other decisions of High Courts and awards of Industrial Tribunals, were considered by the Full Bench of the Labour Appellate Tribunal and the Chairman of the Tribunal (Mr J.N. Majumdar) acknowledged that his earlier view was not correct and expressed his opinion, concurred in by all the other members of the Tribunal, at p. 210 -

> "I am, therefore, of opinion that the expression 'any person' has to be interpreted in terms of 'workman'. The words 'any person' cannot have, in my opinion, their widest amplitude, as that would create incongruity and repugnancy in the provisions of the Act. They are to be interpreted in a manner that persons, who would come within that expression, can at some stage or other, answer the description of workman as defined in the Act."

23. To summarise. Having regard to the scheme and objects of the Act, and its other provisions, the expression "any person" in Section 2(*k*) of the Act must be read subject to such limitations and qualifications as arise from the context; the two crucial limitations are (*1*) the dispute must be a real dispute between the parties to the dispute (as indicated in the first two parts of the definition clause) so as to be capable of settlement or adjudication by one party to the dispute giving necessary relief to the other, and (*2*) the person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment, or conditions of labour (as the case may be) the parties to the dispute have a

direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer, the person regarding whose employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be, strictly speaking, a "workman" within the meaning of the Act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest.

24. In the case before us Dr K.P. Banerjee was not a "workman". He belonged to the medical or technical staff - a different category altogether from workmen. The appellants had no direct, nor substantial interest in his employment or non-employment, and even assuming that he was a member of the same Trade Union, it cannot be said, on the tests laid down by us, that the dispute regarding his termination of service was an industrial dispute within the meaning of Section 2(*k*) of the Act.

The result, therefore, is that the appeal fails and is dismissed.

* * * * *

Municipal Corporation of Delhi v. *Female Workers (Muster Roll)*

AIR 2000 SC 1274

S. SAGHIR AHMAD, J. – Female workers (muster roll), engaged by the Municipal Corporation of Delhi (for short "the Corporation"), raised a demand for grant of maternity leave which was made available only to regular female workers but was denied to them on the ground that their services were not regularised and, therefore, they were not entitled to any maternity leave. Their case was espoused by the Delhi Municipal Workers Union (for short "the Union") and, consequently, the following question was referred by the Secretary (Labour), Delhi Administration to the Industrial Tribunal for adjudication:

> "Whether the female workers working on muster roll should be given any maternity benefit? If so, what directions are necessary in this regard?"

2. The Union filed a statement of claim in which it was stated that the Municipal Corporation of Delhi employs a large number of persons including female workers on muster roll and they are made to work in that capacity for years together though they are recruited against the work of perennial nature. It was further stated that the nature of duties and responsibilities performed and undertaken by the muster-roll, which have been working with the Municipal Corporation of Delhi for years together, have to work very hard in construction projects and maintenance of roads including the work of digging trenches etc. but the Corporation does not grant any maternity benefit to female workers who are required to work even during the period of mature pregnancy or soon after the delivery of the child. It was pleaded that the female workers required the same maternity benefits as were enjoyed by regular female workers under the Maternity Benefit Act, 1961. The denial of the benefits exhibits a negative attitude of the Corporation in respect of a humane problem.

3. The Corporation in their written statement, filed before the Industrial Tribunal, pleaded that the provisions under the Maternity Benefit Act, 1961 or the Central Civil Services (Leave) Rules were not applicable to the female workers, engaged on muster roll, as they were all engaged only on daily wages. It was also contended that they were not entitled to any benefit under the Employees; State Insurance Act, 1948. It was for these reasons that the Corporation contended that the demand of the female workers (muster roll) for grant of maternity leave was liable to be rejected.

4. The Tribunal, by its award dated 2-4-1996, allowed the claim of the female workers (muster roll) and directed the Corporation to extend the benefits under the Maternity Benefit Act, 1961 to muster-roll female workers who were in the continuous service of the Corporation for three years or more. The Corporation challenged this judgment in a writ petition before the Delhi High Court which was dismissed by the Single Judge on 7-1-1997. The Letters Patent Appeal (LPA No. 64 of 1998), filed thereafter by the Corporation was dismissed by the Division Bench on 9-3-1998 on the ground of delay.

28. The Industrial Tribunal, which has given an award in favour of the respondents, has noticed that women employees have been engaged by the Corporation on muster roll, that is to say, on daily-wage basis for doing various kinds of works in projects like construction of buildings, digging of trenches, making of roads, etc., but have been denied the benefit of

maternity leave. The Tribunal has found that though the women employees were on muster roll and had been working for the Corporation for more than 10 years, they were not regularised. The Tribunal, however, came to the conclusion that the provisions of the Maternity Benefit Act had not been applied to the Corporation and, therefore, it felt that there was a lacuna in the Act. It further felt that having regard to the activities of the Corporation, which had employed more than a thousand women employees, it should have been brought within the purview of the Act so that the maternity benefits contemplated by the Act could be extended to the women employees of the Corporation. It felt that this lacuna could be removed by the State Government by issuing the necessary notification under the proviso to Section 2 of the Maternity Act. This proviso lays down as under:

> "Provided that the State Government may, with the approval of the Central Government, after giving not less than two months' notice of its intention of so doing, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise."

29. It consequently issued a direction to the management of the Municipal Corporation, Delhi to extend the benefits of the Maternity Benefit Act, 1961 to such muster-roll female employees who were in continuous service of the management for three years or more and who fulfilled the conditions set out in Section 5 of the Act.

30. We appreciate the efforts of the Industrial Tribunal in issuing the above directions so as to provide the benefit of the Act to the muster-roll women employees of the Corporation. This direction is fully in consonance with the reference made to the Industrial Tribunal. The question referred for adjudication has already been reproduced in the earlier part of the judgment. It falls in two parts as under:

(i) Whether the female workers working on muster roll should be given any maternity benefit.

(ii) If so, what directions are necessary in this regard.

32. Learned counsel for the Corporation contended that since the provisions of the Act have not been applied to the Corporation, such a direction could not have been issued by the Tribunal. This is a narrow way of looking at the problem which essentially is human in nature and anyone acquainted with the working of the Constitution, which aims at providing social and economic justice to the citizens of this country, would outrightly reject the contention. The relevance and significance of the doctrine of social justice has, times out of number, been emphasised by this Court in several decisions. In ***Crown Aluminium Works*** **v.** ***Workmen*** [AIR 1958 SC 30] this Court observed that the Constitution of India seeks to create a democratic, welfare Stae and secure social and economic justice to the citizens. In ***J. K. Cotton spg. & Wvg. Mills Co. Ltd.*** **v.** ***Labour Appellate Tribunal of India*** [AIR 1964 SC 737], Gajendragadkar, J., (as his Lordship then was), speaking for the Court, said:

> "Indeed, the concept of social justice has now become such an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow, or one-sided, or pedantic, and is not

> confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio-economic disparities and inequalities; nevertheless, in dealing with industrial matters, it does not adopt a doctrinaire approach and refuses to yield blindly to abstract notions, but adopts a realistic and pragmatic approach."

33. A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre-or post-natal period.

34. Next it was contended that the benefits contemplated by the Maternity Benefit Act, 1961 can be extended only to workwomen in an "industry" and not to the muster-roll women employees of the Municipal Corporation. This is too stale an argument to be heard. Learned counsel also forgets that the Municipal Corporation was treated to be an "industry" and, therefore, a reference was made to the Industrial Tribunal, which answered the reference against the Corporation, and it is this matter which is being agitated before us.

35. Now, it is to be remembered that the municipal corporations or boards have already been held to be "industry" within the meaning of "the Industrial Disputes Act". In ***Budge Budge Municipality* v. *P.R. Mukherjee*** [AIR 1953 SC 58] it was observed that the municipal activity would fall within the expression "undertaking" and as such would be an industry. The decision was followed in ***Baroda Borough Municipality* v. *Workmen*** [AIR 1957 SC 110] in which the Court observed that those branches of work of the municipalities which could be regarded as analogous to the carrying-on of a trade or business, would be "industry" and the dispute between the municipalities and their employees would be treated as an "industrial disputer". This view was reiterated in ***Corpn. of the City of Nagpur* v. *Employees*** [AIR 1960 SC 675]. In this case, various departments of the Municipality were considered and certain departments of the Municipality were considered and certain departments including the General Administration Department and the Education Department were held to be covered within the meaning of "industry".

36. Taking into consideration the enunciation of law as settled by this Court as also the High Courts in various decisions referred to above, the activity of the Delhi Municipal Corporation by which construction work is undertaken or roads are laid or repaired or trenches are dug would fall within the definition of "industry". The workmen or, for that matter, those employed on muster roll for carrying on these activities would, therefore, be "workmen" and the dispute between them and the Corporation world have to be tackled as an industrial dispute in the light of various statutory provisions of the industrial law, one of

which is the Maternity Benefit Act, 1961. This is the domestic scenario. Internationally, the scenario is not different.

37. Delhi is the capital of India. No other city or corporation would be more conscious than the city of Delhi that India is a signatory to various international covenants and treaties. The Universal Declaration of Human Rights, adopted by the United Nations on 10-12-1948, set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of conventions. On 18-12-1979, the United Nations adopted the "Convention on the Elimination of all Forms of Discrimination against Women". Article 11 of this Convention provides as under:

"Article 11

1. States/parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) the right to work as an inalienable right of all human beings;

(b) the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(e) right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(f) the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(g) the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States/parties shall take appropriate measures:

(a) to prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) to introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) to encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) to provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised repealed or extended as necessary." (emphasis supplied)

38. These principles which are contained in Article 11, reproduced above, have to be read into the contract of service between the Municipal Corporation of Delhi and the women employees (muster roll); and so read these employees immediately become entitled to all the benefits conceived under the Maternity Benefit Act, 1961. We conclude our discussion by providing that the direction issued by the Industrial Tribunal shall be complied with by the Municipal Corporation of Delhi by approaching the State Government as also the Central Government for issuing necessary notification under the proviso to sub-section (1) of Section 2 of the Maternity Benefit Act, 1961, if it has not already been issued. In the meantime, the benefits under the Act shall be provided to the women (muster roll) employees of the Corporation who have been working with them on daily wages.

39. For the reasons stated above, the special leave petition is dismissed.

* * * * *

J.H. Jadhav v. *Forbes Gokak Ltd*

(2005) 3 SCC 202

RUMA PAL, J. - 2. The appellant was employed by the respondent. He claimed promotion as a clerk. When this was not granted, the appellant raised an industrial dispute. The question whether the appellant was justified in his prayer for promotion with effect from the date that his juniors were promoted was referred to the Industrial Tribunal by the State Government. In their written statement before the Tribunal the respondent denied the appellant's claim for promotion on merits. In addition, it was contended by the respondent that the individual dispute raised by the appellant was not an industrial dispute within the meaning of Section 2(*k*) of the Industrial Disputes Act, 1947, as the workman was neither supported by a substantial number of workmen nor by a majority union. The appellant claims that his cause was espoused by the Gokak Mills Staff Union.

3. Before the Tribunal, apart from examining himself, the General Secretary of the Union was examined as a witness in support of the appellant's claim. The General Secretary affirmed that the appellant was a member of the Union and that his cause has been espoused by the Union. Documents including letters written by the Union to the Deputy Labour Commissioner as well as the objection filed by the Union before the Conciliation Officer were adduced in evidence. The Tribunal came to the conclusion that in view of the evidence given by the General Secretary and the documents produced, it was clear that the appellant's cause had been espoused by the Union which was one of the unions of the respondent employer. On the merits, the Tribunal accepted the appellant's contentions that employees who were junior to him had been promoted as clerks. It noted that no record had been produced by the respondent to show that the management had taken into account the appellant's production records, efficiency, attendance or behaviour while denying him promotion. The Tribunal concluded that the act of the respondent in denying promotion to the appellant amounted to unfair labour practice. An award was passed in favour of the appellant and the respondent was directed to promote the appellant as a clerk from the date his juniors were promoted and to give him all consequential benefits.

4. The award of the Industrial Tribunal was challenged by the respondent by way of a writ petition. A Single Judge dismissed the writ petition. The respondent being aggrieved filed a writ appeal before the appellate court. The appellate court construed Section 2(*k*) of the Industrial Disputes Act, 1947 and came to the conclusion that an individual dispute is not an industrial dispute unless it directly and substantially affects the interest of other workmen. Secondly, it was held that an individual dispute should be taken up by a union which had representative character or by a substantial number of employees, before it would be converted into an industrial dispute neither of which according to the appellate court, had happened in the present case. It was held that there was nothing on record to show that the appellant was a member of the Union or that the dispute had been espoused by the Union by passing any resolution in that regard.

5. The definition of "industrial dispute" in Section 2(*k*) of the Act shows that an 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 the employment or with the conditions of labour, of any person. The definition has been the subject-matter of several decisions of this Court and the law is well settled. The *locus classicus* is the decision in ***Workmen* v. *Dharampal Premchand (Saughandhi)*** [AIR 1966 SC 182] where it was held that for the purposes of Section 2(*k*) it must be shown that: (*1*) The dispute is connected with the employment or non-employment of a workman. (*2*) The dispute between a single workman and his employer was sponsored or espoused by the union of workmen or by a number of workmen. The phrase "the union" merely indicates the union to which the employee belongs even though it may be a union of a minority of the workmen. (*3*) The establishment had no union of its own and some of the employees had joined the union of another establishment belonging to the same industry. In such a case it would be open to that union to take up the cause of the workmen if it is sufficiently representative of those workmen, despite the fact that such union was not exclusively of the workmen working in the establishment concerned. An illustration of what had been anticipated in ***Dharampal*** case is to be found in ***Workmen* v. *Indian Express (P) Ltd.*** [(1969) 1 SCC 228] where an "outside" union was held to be sufficiently representative to espouse the cause.

6. In the present case, it was not questioned that the appellant was a member of the Gokak Mills Staff Union. Nor was any issue raised that the Union was not of the respondent establishment. The objection as noted in the issues framed by the Industrial Tribunal was that the Union was not the majority union. Given the decision in ***Dharampal*** case the objection was rightly rejected by the Tribunal and wrongly accepted by the High Court.

7. As far as espousal is concerned there is no particular form prescribed to effect such espousal. Doubtless, the union must normally express itself in the form of a resolution which should be proved if it is in issue. However, proof of support by the union may also be available *aliunde*. It would depend upon the facts of each case. The Tribunal had addressed its mind to the question, appreciated the evidence both oral and documentary and found that the Union had espoused the appellant's cause.

8. The Division Bench misapplied the principles of judicial review under Article 226 in interfering with the decision. It was not a question of there being no evidence of espousal before the Industrial Tribunal. There was evidence which was considered by the Tribunal in coming to the conclusion that the appellant's cause had been espoused by the Union. The High Court should not have upset this finding without holding that the conclusion was irrational or perverse. The conclusion reached by the High Court is therefore unsustainable.

9. For all these reasons the decision of the High Court cannot stand and must be set aside.

10. Learned counsel appearing for the respondent then submitted that the matter may be remanded back to the Division Bench of the High Court as the Court had not considered the other arguments raised by the respondent while impugning the award of the Industrial Tribunal. It appears from the impugned decision that the only other ground raised by the respondent in the writ appeal was that the grievance of the appellant had been belatedly raised. We have found from the decision of the Industrial Tribunal that no such contention had been raised by the respondent before the Tribunal at all. We are not prepared to allow the respondent to raise the issue before the High Court.

11**.** The respondent finally submitted that pursuant to disciplinary proceedings initiated against the appellant in the meanwhile, the appellant had been dismissed from service and that the order of dismissal was the subject-matter of a separate industrial dispute. We are not concerned with the propriety of the order of dismissal except to the extent that the appellant cannot obviously be granted actual promotion today. Nevertheless, he would be entitled to the monetary benefits of promotion pursuant to the award of the Industrial Tribunal which is the subject-matter of these proceedings up to the date of his dismissal. Any further relief that the appellant may be entitled to must of necessity abide by the final disposal of the industrial dispute relating to the order of dismissal which is said to be pending.

12**.** We therefore allow the appeal and set aside the decision of the High Court. The award of the Industrial Tribunal is confirmed subject to the modification that the promotion granted by the award will be given effect to notionally for the period as indicated by the award up to the date of the appellant's dismissal from service. Reliefs in respect of the period subsequent to the order of dismissal shall be subject to the outcome of the pending industrial dispute relating to the termination of the appellant's services. If the termination is ultimately upheld, the appellant will be entitled only to the reliefs granted by us today. If on the other hand the termination is set aside, the appellant will be entitled to promotion as granted by the award.

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Dharangadhara Chemical Works Ltd. **v.** *State of Saurashtra*

AIR 1957 SC 264 : 1957 SCR 152

N.H. BHAGWATI, J. - This Appeal with a certificate of fitness granted by the High Court of Saurashtra raises an interesting question whether the agarias 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, hereinafter referred to as "the Act".

2. The facts as found by the Industrial Tribunal are not in dispute and are as follows. The appellants are lessees of the Salt Works from the erstwhile State of Dharangadhara and also hold a licence for the manufacture of salt on the land. The appellants require salt for the manufacture of certain chemicals and part of the salt manufactured at the Salt Works is utilised by the appellants in the manufacturing process in the Chemical Works at Dharangadhara and the remaining salt is sold to outsiders. The appellants employ a Salt Superintendent who is in charge of the Salt Works and generally supervises the Works and the manufacture of salt carried on there. The appellants maintain a railway line and sidings and also have arrangements for storage of drinking water. They also maintain a grocery shop near the Salt Works where the agarias can purchase their requirements on credit.

3. The salt is manufactured not from sea water but from rain water which soaking down the surface becomes impregnated with saline matter. The operations are seasonal in character and commence sometime in October at the close of the monsoon. Then the entire area is parcelled out into plots called pattas and they are in four parallel rows intersected by the railway lines. Each agaria is allotted a patta and in general the same patta is allotted to the same agaria year after year. If the patta is extensive it is allotted to two agarias who work the same in partnership. At the time of such allotment, the appellants pay a sum of Rs 400 for each of the pattas and that is to meet the initial expenses. Then the agarias commence their work. They level the lands and enclose and sink wells in them. Then the density of the water in the wells is examined by the Salt Superintendent of the appellants and then the brine is brought to the surface and collected in the reservoirs called condensers and retained therein until it acquires by natural process a certain amount of density. Then it is flowed into the pattas and kept there until it gets transformed into crystals. The pans have got to be prepared by the agarias according to certain standards and they are tested by the Salt Superintendent. When salt crystals begin to form in the pans they are again tested by the Salt Superintendent and only when they are of a particular quality the work of collecting salt is allowed to be commenced. After the crystals are collected, they are loaded into the railway wagons and transported to the depots where salt is stored. The salt is again tested there and if it is found to be of the right quality, the agarias are paid therefor at the rate of Rs 0-5-6 per maund. Salt which is rejected belongs to the appellants and the agarias cannot either remove the salt manufactured by them or sell it. The account is made up at the end of the season when the advances which have been paid to them from time to time as also the amounts due from the agarias to the grocery shop are taken into account. On a final settlement of the accounts, the amount due by the appellants to the agarias is ascertained and such balance is paid by the appellants to the agarias. The manufacturing season comes to an end in June when the monsoon begins and then the agarias return to their villages and take up agricultural work.

4. 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 make 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 agarias. 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.

5. 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 Government of Saurashtra, by its letter of Reference dated November 5, 1951, referred the disputes for adjudication to the Industrial Tribunal, Saurashtra State, Rajkot. 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 Section 10 of the Act.

6. This question was tried as a preliminary issue and by its order dated August 30, 1952, the Tribunal held that the agarias were workmen within the meaning of the Act and that the reference was intra vires and adjourned the matter for hearing on the merits. Against this order the appellants preferred an appeal being Appeal No. 302 of 1952 before the Labour Appellate Tribunal of India, and having failed to obtain stay of further proceedings before the Industrial Tribunal pending the appeal, they moved the High Court of Saurashtra in M.P. No. 70 of 1952 under Articles 226 and 227 of the Constitution for an appropriate writ to quash the reference dated November 5, 1951 on the ground that it was without jurisdiction. Pending the disposal of this writ petition, the appellants obtained stay of further proceedings before the Industrial Tribunal and in view of the same the Labour Appellate Tribunal passed an order on September 27, 1953 dismissing the appeal leaving the question raised therein to the decision of the High Court. By their judgment dated January 8, 1954 the learned Judges of the High Court agreed with the decision of the Industrial Tribunal that the agarias were workmen within Section 2(s) of the Act and accordingly dismissed the application for writ. They, however, granted a certificate under Article 133(1)(*c*) of the Constitution and that is how the appeal comes before us.

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 workman within the definition of the term as contained in the Act."

8. 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". [Per Hilbery, J. in ***Collins* v. *Hertfordshire County Council*** (1947) KB 598, 615].

13. The principle which emerges from these authorities is that the prima facie test for the determination of the relationship between master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work. "The proper test is whether or not the hirer had authority to control the manner of execution of the act in question".

14. 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 Somervelle, L.J. in ***Cassidy* v. *Ministry of Health*** [(1951) 2 KB 343, 352-3].

15. 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.

16. The Industrial Tribunal on a consideration of the facts in the light of the principles enunciated above came to the conclusion that though certain features which are usually to be found in a contract of service were absent, that was due to the nature of the industry and that on the whole the status of the agarias was that of workmen and not independent contractors. It was under the circumstances strenuously urged before us by the learned counsel for the respondents that the question as regards the relationship between the appellants and the agarias was a pure question of fact, that the Industrial Tribunal had jurisdiction to decide that question and had come to its own conclusion in regard thereto, that the High Court, exercising its jurisdiction under Articles 226 and 227 of the Constitution, was not competent to set aside the finding of fact recorded by the Industrial Tribunal and that we, here, entertaining an appeal from the decision of the High Court, should also not interfere with that finding of fact.

17. Reliance was placed on the observations of Mahajan, J., as he then was, in ***Ebrahim Aboobakar v. Custodian General of Evacuee Property*** [(1952) SCR 696, 702:]

> "It is plain that such a writ cannot be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision is wrong. Indeed, it must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of natural justice.... But once it is held that the court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a court has jurisdiction to decide rightly as well as wrongly".

18. There is considerable force in this contention of the respondents. The question whether the relationship between the parties is one as between employer and employee or

between master and servant is a pure question of fact. Learned counsel for the appellants relied upon a passage from Batt's ***Law of Master and Servant*** 4th Edn., at p. 10:

> "The line between an independent contractor and a servant is often a very fine one; it is a mixed question of fact and law, and the judge has to find and select the facts which govern the true relation between the parties as to the control of the work, and then he or the jury has to say whether the person employed is a servant or a contractor."

It is equally well settled that the decision of the Tribunal on a question of fact which it has jurisdiction to determine is not liable to be questioned in proceedings under Article 226 of the Constitution unless at the least it is shown to be fully unsupported by evidence.

19. Now the argument of Mr Kolah for the appellants is that even if all the facts found by the Tribunal are accepted they only lead to the conclusion that the agarias are independent contractors and that the finding, therefore, that they are workmen is liable to be set aside on the ground that there is no evidence to support it. We shall, therefore, proceed to determine the correctness of this contention.

20. Apart from the facts narrated above in regard to which there is no dispute, there was the evidence of the Salt Superintendent of the appellants which was recorded before the Tribunal:

> "The Panholders are allotted work on the salt pans by oral agreement. The Company has no control over the panholders in regard to the hours of work or days of work. The Company's permission is not sought in matter of sickness or in matter of going out to some village. The Company has no control over the panholders as to how many labourers they should engage and what wages they should pay them. The Company's supervision over the work of the panholders is limited to the proper quality as per requirements of the Company and as per standard determined by the Government in matter of salt. The Company's supervision is limited to this extent."

21. The Company acts in accordance with clause 6 of the said agreement in order to get the proper quality of salt.

22. Panholders are not the workmen of the Company, but are contractors. The men who are entrusted with pattas, work themselves. They can engage others to help them and so they do. There is upto this day no instance that any panholder who is entrusted with a patta, has not turned up to work on it. But we do not mind whether he himself works or not.

23. If any panholder after registering his name (for a patta) gets work done by others, we allow it to be done.

24. We own 319 pattas. Some pattas have two partners. In some, one man does the job. In all the pans, mainly the panholders work with the help of their (respective) families".

25. **Clause** 6 of the agreement referred to in the course of his evidence by the Salt Superintendent provided:

> *"*6. We bind ourselves to work as per advice and instructions of the officers appointed by them in connection with the drawing of brine or with the process of salt production in the pattas and if there is any default, negligence or slackness in

executing it on our part or if we do not behave well in any way, the Managing Agent of the said Company can annul this agreement and can take possession of the patta, brine, well, etc., and as a result we will not be entitled to claim any sort of consideration or compensation for any half processed salt lying in our patta; or in respect of any expense incurred or labour employed in preparing kiwa patta, well bamboo lining, etc."

26. There was also the evidence of Shiva Daya, an agaria, who was ex amined on behalf of the respondents:

"There is work of making enclosures and then of sinking wells. The company supervises this work. While the wells are being sunk, the Company measures the density of the brine of wells. In order to bring the brine of wells to the proper density, it is put in a condenser and then the Company tests this and then this brine is allowed to flow in the pattas....

The bottom of a patta is prepared after it is properly crushed under feet and after the company inspects and okays that it is alright, water is allowed to flow into it. When salt begins to form at the bottom of a patta, an officer of the company comes and inspects it. At the end of 2½ months, the water becomes saturated i.e. useless, and so it is drained away under the supervision of the company. Then fresh brine is allowed to flow into the patta from the condenser. This instruction is also given by the company's officer."

27. It was on a consideration of this evidence that the Industrial Tribunal came to the conclusion that the supervision and control exercised by the appellants extended to all stages of the manufacture from beginning to end. We are of opinion that far from there being no evidence to support the conclusion reached by the Industrial Tribunal there were materials on the record on the basis of which it could come to the conclusion that the agarias are not independent contractors but workmen within the meaning of the Act.

28. Learned counsel for the appellants laid particular stress on two features in this case which, in his submission, were consistent only with the position that the agarias are independent contractors. One is that they do piece-work and the other that they employ their own labour and pay for it. In our opinion neither of these two circumstances is decisive of the question. As regards the first, the argument of the appellants is that as the agarias are under no obligation to work for fixed hours or days and are to be paid wages not per day or hours but for the quantity of salt actually produced and passed, at a certain rate, the very basis on which the relationship of employer and employees rests is lacking, and that they can only be regarded as independent contractors. There is, however, abundant authority in England that a person can be a workman even though he is paid not per day but by the job.

29. As regards the second feature relied on for the appellants it is contended that the agarias are entitled to engage other persons to do the work, that these persons are engaged by the agarias and are paid by them, that the appellants have no control over them and that these facts can be reconciled only with the position that the agarias are independent contractors. This argument, however, proceeds on a misapprehension of the true legal position. The broad distinction between a workman and an independent contractor lies in this that while the

former agrees himself to work, the latter agrees to get other persons to work. Now a person who agrees himself to work and does so work and is therefore a workman does not cease to be such by reason merely of the fact that he gets other persons to work along with him and that those persons are controlled and paid by him. 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, pp. 651-52:

> "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".

30. 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.

31. There are no doubt considerable difficulties that may arise if the agarias were held to be workmen within the meaning of Section 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 agarias 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 where 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 Section 2(s) of the Act was justified on the materials on the record.

32. We accordingly see no ground for interfering with that decision and dismiss this appeal with costs.

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Mangalore Ganesh Beedi Workers v. *Union of India*

(1974) 4 SCC 43

RAY, C.J. - The provisions of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 referred to as "the Act" are impeached as unconstitutional in these petitions and appeals.

2. Broadly stated, the Act is challenged on the grounds..... the restrictions imposed by the Act violate freedom of trade and business guaranteed under Article 19(1)(*g*). The Act imposes unreasonable burdens in cases where a manufacturer or trade mark holder of beedi has no master and servant relationship and no effective control on independent contractors or home-workers. The manufacturer or trade mark holder is rendered liable as the principal employer of contract labour.

3. The petitioners and the appellants are of two characters. The majority are proprietors of beedi factories and owners of trade mark registered under the Trade Marks Act in relation to beedies. Some are home-workers.

4. The beedi industry is widespread in this Country. The manufacture of beedi is done in stages. The tobacco is blended often with some other ingredient. A small quantity of it is put on the beedi leaf which is previously wet to render it flexible to prevent any crushing of leaf and is also cut to size. The beedi leaf is then rolled keeping the tobacco within it and its ends are then closed. The beedis thus rolled are collected and warmed or roasted after which they are ready for packing, labelling and sale. Where the proprietor owns a trade mark, the trade mark labels are affixed to the individual beedis as also on the packets.

5. The work of wetting and cutting of the wrapper leaves is one of the items of work in the process. Power is seldom employed for the purpose. The industry depends entirely upon human labour. If more than 20 workers are employed in a particular place for the manufacture of beedis, the provisions of the Factories Act, 1940 will apply to the premises.

6. Three systems are adopted in the manufacture of beedis. First is the factory system. There the manufacturer is the owner of the factory. Workers gather and work under his supervision as his employees. Second is the contract system of employment. That is the most prevalent form. Under this system, the proprietor gives to the middlemen quantities of beedi leaves and tobacco. The contractor on receiving the materials manufactures beedis (*i*) by employing directly labourers and manufacturing beedis or (ii) by distributing the materials amongst the home-workers, as they are called, mostly women who manufacture beedis in their own homes with the assistance of other members of their family including children. The third system is that of outworkers. They roll beedis out of the tobacco and beedi leaves supplied by the proprietor himself without the agency of middlemen. The beedis thus supplied whether by the outworkers or contractor are roasted, labelled and packed by the proprietor and sold to the public.

7. Under these systems, the contractor engages labourers less than the statutory number to escape the application of the Factories Act. There is a fragmentation of the place of manufacture of beedis with a view to evading the factory legislation. Sometimes there is no definite relationship of master and servant between the actual worker and the ultimate

proprietor. Branch managers or contractors are often men of straw. The proprietor will not be answerable for the wages of the outworkers because there is no privity of contract between them. A large body of actual workers are illiterate women who could with impunity be exploited by the proprietors and contractors. There is in this background an indiscriminate and undetectable employment of child labour. The contractor being himself dependent on the proprietor has little means to have any organised system. Women and infirm persons can earn something by rolling beedis. The dependence of these people particularly the women shows that they have little bargaining power against powerful proprietors or contractors.

8**.** A typical contractor agrees with the proprietor to purchase tobacco and to pay for it at the ruling rate and to supply the proprietor with such quantity of beedis as will be fixed by the proprietor. He also undertakes not to use any tobacco other than that supplied by the proprietor. The proprietor has the authority to send his representative to inspect the place or places of manufacture. The contractor undertakes not to enter into any agreement of similar nature with any other concern to make beedis. The agreement stipulates that the contractor will be the sole employer answerable in regard to the disputes raised by the workers.

9**.** There was a Royal Commission on labour in India in 1931. The findings were these. The making or beedi is an industry widely spread over the country. It is partly carried on in the home but mainly in the workshops in the bigger cities and towns. Every type of building is used, but small workshops preponderate. It is there that the graver problems mainly arise. Many of these places are small airless boxes. There are no windows where workers are crowded. There are dark semi basements with damp and floors. Sanitary conveniences and arrangements for removal of refuses are practically absent. Payment is by piece rate. The hours are unregulated. Many smaller workshops are open day and night. There are no intervals for meals. There are no weekly holidays.

10**.** In 1944, the Government of India appointed a Committee under the Chairmanship of Sri D.V. Rege to investigate conditions of industrial labour. The report referred to the contract system whereby the factory owner engaged a large number of middlemen, supplied them with raw materials and purchased finished products from them. The report found that unhealthy working conditions, long hours of work, employment of women and children, deduction from wages and the sub-contract system of organisation required immediate attention. It was desirable to abolish outworker system and to encourage establishment of big industries if protective labour legislation was to be enforced with success.

11**.** In 1946, the Government of Madras appointed a Court of Inquiry into labour conditions in beedi, cigar, snuff-curing and tanning industries. There were 90,000 workers depending on beedi industry in Madras. Of these 26,500 workers were women. Employment of children in the Industry was universal. $2/5^{th}$ of the total workers were children. Home workers were predominant. There were full time workers but they were paid less than fair wages. Working conditions were extremely unsatisfactory from the standpoint of floor, space, sanitation, ventilation and lighting.

12**.** In 1954, the Government of India appointed Sri Natraj, Inspector of Factories to assess the situation with a view to affording maximum legislative protection to the workers. The Report was as follows. Although the number of workers engaged in the manufacture of

beedi exceeded one lakh, only 17,544 were employed in factories. The contract and home-work systems enriched proprietor at the expense of the worker and also deprived the latter of his bargaining power in regard to conditions of labour. The poverty as well as illiteracy of the workers was taken advantage of by the employers. There were long hours of work with low wages, deplorable working conditions and unrestricted employment of women and children.

13. The entire beedi industry was unorganised and scattered over the entire state, employing a large force of women. It called for radical reforms in the organisation. There was reluctance of the manufacturer to provide certain amenities to the workers such as rest sheds, canteens, creches, ambulance room, etc. Under the indirect employment system conditions obtaining in the industry were still worse. The middlemen contractors did not observe any higher standards in the premises than in those under the manufacturers. The Payment of Wages Act applied to factories, but it was difficult to detect violations of the Act because the prescribed registers were not maintained. The Madras Maternity Benefit Act which applied to factories was rendered practically ineffective as far as petty industry was concerned because there was no record to prove that women were employed. The Report stated that the employers succeeded in organised circumvention of all existing legislation by resorting to splitting up of their factories into smaller units run by contractors who had no knowledge in respect of social laws.

14. The conditions in working places were bad. The Report suggested licensing of premises to fix responsibility of the employer for maintenance of minimum standards of ventilation, lighting and sanitation in working places.

15. The employment of women and children, wages and wage structure in the industry were all considered by the Committee. The Committee recommended solution of unhealthy working conditions under miserable environments, long working hours with its attendant evils, unregulated employment of women and children and deduction from wages. The contract of home-work system of employment was found to be designed solely for the promotion of trade but not the industry of which the labour forms the integral part. It was, therefore, expected that the beedi industry should carry the labour along with it as it developed and was organised in such manner that it discharged its social and moral responsibilities towards the workers.

16. It is in this background that the Act came into existence. In ***State of Madras*** **v.** ***Rajagopalan*** [AIR 1955 SC 817] this Court held that the previous material in the shape of Reports of Commissions to review the working of the industry was admissible in evidence about the prevailing system and conditions of industry.

17. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 is an Act to provide for the welfare of the workers in beedi and cigar establishments and to regulate the conditions of their work and for matters connected therewith. The special feature of the industry was the manufacture of beedis through contractors and by distributing work in the private dwelling house, where the workers took raw materials given by the employers of contractors. The relationship between employers and employees was not well defined. The application of the Factories Act met with difficulties. The labour in the industry was unorganised and was not able to look after its own interests. The industry was highly mobile.

The attempt of some of the States to legislate in this behalf was not successful. The necessity for central legislation was felt. A bill was mooted to provide for the regulation of the contract system of work, licensing of beedi and cigar industrial premises and matters like health, hours of work, spread over, rest periods, over time, annual leave with pay, distribution of raw materials etc. The anxiety was expressed by several Committees to introduce some regulation in the employer-employee relationship and to obtain certain benefits to the employees which were denied to them.

18**.** The so-called contractor or the employer as styled by the employees has been a matter of some concern to the employees as well as to the State. There were certain good and bad points about the systems that were prevalent in the manufacture of beedi. The contractor was very often a man of straw. He was said to be the creation of the principal employer who put him forward on many occasions as a screen to avoid his own responsibility towards the employees. Another broad grievance was that there was double checking and rejection of beedis or double chhat, out of which the second chhat at the principal employer's place was invariably in the absence of the employee. This chhat was alleged to be most irrational and depending upon the whim of the employer. As far as the house-work system was concerned there was an advantage to the employee with some kind of disadvantage to the employer. Persons who could spare time in their houses but could not move out for the purpose of employment got ready employment and could supplement their income from agriculture or other sources. They were in a position to work as and when leisure was available and like a factory employee there was no rigour of attending the factory or work at stated time and for stated number of hours. It appeared that pilfering was a vice of this industry. By pilfering tobacco which is the most valuable ingredient, the employees were able to earn some income by again rolling it into beedis and selling them.

19**.** The relationship between the proprietor, middlemen and out workers came up for consideration in this Court in ***Chintaman Rao*** **v.** ***State of Madhya Pradesh*** [AIR 1958 SC 388]. The proprietor of a beedi factory was prosecuted under the Factories Act for non-compliance with the provisions of that Act. The proprietor pleaded that the workers were not under his employment. The contention was that the sattedars who were found in the factory were independent contractors and not workers. The management issued tobacco and sometimes beedi leaves to sattedars who manufactured beedis in their own factories or by an arrangement with a third party. The sattedars collected the beedis thus made and supplied to the factories for a consideration. It was held that the sattedars were independent contractors and not the agents. The enforcement of factory and labour legislation could be rendered impossible by adopting the simple device of disintegrating what normally will be a factory. The Legislature wanted to regulate the contract system. The legislation did not want to stop the contract system. The provisions in the Act recognised the contractor as a part and parcel of the beedi industry. The contractor is referred to where the terms "contract labour" or "principal employer" or "employer" have been defined. Several functions which the employer has to perform are also performed by the contractor. He delivers tobacco and leaves to the home-worker and collects the rolled beedis after application of chhat. He makes payment to them. Therefore, the contractor has been retained as an integral part though the attempt is to eliminate the vices which crept into the industry.

20. The Madras High Court in ***K. Abdul Azeez Sahib and Sons, Four Horse Beedi Manufacturers, Vellore-4*** **v.** ***Union of India*** [(1973) 2 Mad LJ 126] held the definitions of employer and principal employer in Section 2(*g*)(*a*) and 2(*m*) of the Act to be valid but held that Sections 26 and 27 of the Act are wholly unenforceable against the trade mark holders whether with reference to home-workers or with reference to employees working in any industrial premises. The Madras High Court held that since a worker in a beedi industry is not required to work regularly for any prescribed period of hours in a day or even day after day for any specified period, from the very nature of the case, the provisions in the Maternity Benefit Act, 1961 are unworkable with regard to such home-workers, and, therefore, they will have no application to them. The Madras High Court held that Sections 7(l)(*c*), 7(2), 26, 27, 31, and 37(3) insofar as they relate to home-workers are ultra vires and illegal and unenforceable against trade mark holders in beedis and contractors in the manufacture of beedis. The Madras High Court held that Sections 7(l)(*c*), 7(2), 26 and 27 are ultra vires and illegal and unenforceable against the petitioners who are manufacturers of cigar or cigar rollers.

21. The Bombay High Court in ***Chetabhai Purushottam Patel, Beedi Manufacturers of Bhandara*** **v.** ***State of Maharashtra by Secretary, Industries and Labour Department, Sachivalaya, Bombay*** [(1972) 1 Lab LJ 130] held that the provisions of Section 2(*g*)(*a*) and 2(*m*) of the Act are invalid to be in excess of the requirements of the situation because if the principal employer is fared with the proposition of bearing all the civil and criminal responsibilities of omission and commission of contractors under him the inevitable result will be that the manufacturer will give up the Gharkata system and may think of some other system less onerous under the Act. The Bombay High Court also said that the words "in relation to other labour" contained in Section 2(*g*)(*b*) are to be deleted. The Bombay High Court further held that the provisions of Sections 26 and 27 of the Act will not apply to home-workers at all.

22. The Mysore High Court in ***P. Syed Saheb & Sons*** **v.** ***State of Mysore*** [1972 Mys LJ 450] held that Sections 3 and 4 of the Act are constitutional and not violative of Articles 14 and 19(l)(*g*) of the Constitution. Section 3 of the Act prohibits establishment of an industrial premises without obtaining a licence granted under the Act. Section 4 of the Act provides for the procedure for the issue, renewal and cancellation of a licence. The Mysore High Court further held that Sections 26 and 27 of the Act are not unreasonable restrictions and it is possible to find out whether a home-worker has qualified himself for annual leave and it is possible to make up for the lost wages. The Mysore High Court also held that Section 31 of the Act is valid and Rule 29 does not impose unreasonable restriction by compelling the employer to accept beedis when they are sub-standard and the sub-standard beedis and cigars exceed 5 per cent. If the employer finds that the sub-standard beedis and cigars are above 5 per cent then he has to refer the matter to the Inspector.

23. The Kerala High Court in ***Chirukandeth Chandrasekharan*** **v.** ***Union of India*** [(1972) 1 Lab LJ 340] held that the provisions of Sections 2(*g*)(*a*), 2(*m*), 3, 4, 21, 26 and 27 of the Act impose unreasonable restrictions on business or trade and are violative of Article 19(1)(*g*) of the Constitution. The Kerala High Court held that the words "in relation to other labour" occurring in Section 2(*g*)(*b*) have also be deleted. The Kerala High Court held

Sections 3 and 4 to be valid. The Kerala High Court held that Sections 26 and 27 will not apply to home-workers. The Kerala High Court struck down Rule 29 of the Kerala Rules on the ground that the imposition of 5 per cent on the maximum amount of rejection is an arbitrary percentage. Kerala Rule 29 stated that no employer shall ordinarily reject more than 2.5 per cent. The proviso states that there can be rejection up to 5 per cent for reasons recorded in writing. This imposition of 5 per cent limit in the proviso was construed by the Kerala High Court to be unreasonable inasmuch as the quality of beedis would go down if the workers are assured that more than 5 per cent will not be rejected.

24**.** The Andhra Pradesh High Court in Civil Appeals Nos. 1972 to 1988 of 1971, held that Sections 3 and 4 of the Act offend Articles 14 and 19(l)(*g*) of the Constitution and are, therefore, void. The Andhra Pradesh High Court came to the conclusion that the provisions contained in Sections 3 to 27 of the Act do not apply to home-workers. The High Court held that the Act is applicable to an independent contractor where he is employing labour for and on his own behalf. There he is the principal employer. No artificial relationship of master and servant arises as a result of the operation of the definitions in Sections 2(*g*)(*a*)(*b*) and 2(*m*) of the Act. The Gujarat High Court, in Civil Appeal No. 585 of 1971, upheld the provisions of the Act to be constitutional.

25**.** The first contention on behalf of the petitioners and the appellants is that the Act of 1966 is invalid on the ground of lack of legislative competence. The High Courts of Madras, Kerala, Gujarat, Mysore and Andhra Pradesh have rightly held the Act to have constitutional competence. Counsel on behalf of the petitioners contended that Entry 24 in List II is the only legislative Entry for the piece of Legislation. Entry 24 speaks of industries subject to the provisions of Entries 7 and 52 of List I. Entry 7 in List I speaks of industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. Entry 52 in List I speaks of industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest. The legislation in the present case does not fall within Entry 24 in List II or Entries 7 and 52 in List I. Entry 24 in List III speaks of Labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits. The Act is for welfare of labour. It is not an Act for industries. The true nature and character of the legislation shows that it is for enforcing better conditions of labour amongst those who are engaged in the manufacture of beedis and cigars.

26**.** The scheme of the Act relates to provisions regarding health and welfare, conditions of employment, leave with wages, extension of benefits by applying other Acts to labour. To illustrate Section 28 of the Act extends benefits of the Payment of Wages Act to industrial premises, Section 31 of the Act provides for security of service, Section 37 of the Act extends the benefit of Industrial Standing Orders Act, 1946. Again, Section 37(3) of the Act makes provisions of the Maternity Benefit Act applicable to every establishment. Section 38(1) of the Act applies the safety provisions contained in Chapter IV of the Factories Act to industrial premises. Section 39(1) of the Act makes the Industrial Disputes Act, 1947 applicable to matters arising in respect of every industrial premises. Section 39(2) of the Act provides that disputes between an employee and an employer in relation to issue of raw materials, rejection of beedis and cigars, payment of wages for the beedis and cigars rejected by the employer,

shall be settled by such authority as the State Government may specify. An appeal is provided to the Appellate Authority whose decision is final. Section 39(1) of the Act applies to industrial premises. Section 39(2) of the Act applies to every establishment.

27. The Act speaks of licensing of industrial premises. The benefits under the Act are extended to both industrial premises and establishments. Establishments mean also places where home-workers work.

28. The pith and substance of this Act is regulation of conditions of employment in the beedi and cigar industry. The Act deals with particular subject-matter as regards the establishments and industrial premises. These matters are regulation of conditions of employment in the industry and the industrial relations between the employer and the employee. Entries 22 to 24 in List III are wide enough to cover this piece of labour welfare measure. Entry 22 deals with labour welfare. Entry 23 deals with social security, employment and unemployment. Entry 24 deals with welfare of labour including conditions of work, provident funds, employer's liability, workmen's compensation, invalidity and old age pensions and maternity benefits. The Act is valid and falls within Entries 22, 23, and 24 of List III.

29. Sections 3 and 4 of the Act were challenged as violative of Article 19(l)(*g*) and Article 14 on account of procedural unreasonableness and conferment of unfettered powers on the licensing authority without the requisite safeguards. These two Sections require licence in respect of industrial premises. The provisions are applicable both to trade mark holders as well as contractors. There is no difficulty with regard to manufacturers to obtain licence in respect of industrial premises. If contractors are employers of labour for and on their own behalf, the contractors will have to obtain licences for manufacture of beedis in industrial premises. The relevant authorities have to refer to certain matters in the grant or refusal of a licence. These matters as set out in Section 4 of the Act are (*a*) suitability of the place or premises which is proposed to be used for the manufacture of beedi or cigar or both (*b*) the previous experience of the applicant, (*c*) the financial resources of the applicant including his financial capacity to meet the demands arising out of the provisions of the laws for the time being in force relating to the welfare of labour (*d*) whether the application is made bona fide on behalf of the applicant himself or any other person and (*e*) welfare of the labour for the locality in the interest of the public generally and such other matters as may be prescribed. The licensing authority is required to communicate his reason in writing when he refuses to grant a licence. Section 5 of the Act provides an appeal to the Appellate Authority against such order. The power to grant or refuse a licence is sufficiently controlled by necessary guidance. There are safeguards preventing the abuse of power. The right to appeal is a great safeguard. The various matters indicated in Section 4 in regard to the grant of licence indicate not only the various features which are to be considered but also rule out any arbitrary act. There is machinery as well as procedure for determining the grant or refusal of a licence. The application for grant of a licence is to be determined on objective considerations as laid down in the Section. There is neither unfairness nor unreasonableness in Sections 3 and 4 of the Act.

30. The validity of the Act was challenged on the principal ground that the Act imposed unreasonable restrictions on the manufacturers in their right to carry on trade and business in

the manufacture of beedis and cigars. The unreasonable restriction was said to be the imposition of vicarious liability on the manufacturers for acts and omissions in case of independent contractors through whom they get beedis and cigars and over whose employees they do not have any control and with whom they do not come in contract. The provisions of Section 2(*g*)(*a*) and 2(*m*) read with Section 2(*e*) and (*f*) of the Act are said to create a totally artificial and fictional definition of employer and thereby to cause vicarious liabilities upon a manufacturer of and trader in beedis in respect of diverse matters which entail civil and criminal liabilities. Liabilities are imposed on manufacturer or trader in beedis in respect of home-workers whom it is said, they cannot control. The home-workers are in thousands. It is impossible for a manufacturer to have any idea of the identity of the persons rolling beedis or the premises where they work. Raw materials are delivered to workers to do the work of rolling the beedis himself and not having done by any other person. It is, therefore, said there is no rational basis for imposing vicarious liability. Though liabilities and obligations are great in relation to contract labour there is said to be no corresponding creation of rights which normally exist in employer in respect of his employees. The cumulative effect and impact of the various provisions of the Act imposing liability on the manufacturer is said to render it impossible for the manufacturer or trader to carry on his business. From a commercial point of view, the restrictions are said to be drastic and unreasonable.

31**.** The Act defines in Section 2(*e*) contract labour meaning any person engaged or employed in any premises by or through a contractor with or without the knowledge of the employer, in any manufacturing process; Section 2(*f*) of the Act defines employee to mean a person employed directly or through any agency, whether for wages or not, in any establishment to do any work skilled and unskilled and includes (*i*) any labourer who is given raw materials by an employer or a contractor for being made into beedi and cigar or both at home (hereinafter referred to in this Act as "home-worker") and (*ii*) any person not employed by an employer or a contractor but working with the permission of, or under agreement with, the employer or contractor. Section 2(*g*) of the Act defines "employer" to mean (*a*) in relation to contract labour the principal employer, and (*b*) in relation to other labour, the person who has the ultimate control over the affairs of any establishment or who has, by reason of his advancing money, supplying goods or otherwise, a substantial interest in the control of the affairs of any establishment, and includes any other person to whom the affairs of the establishment are entrusted, whether such other person is called the managing agent, manager, superintendent or by any other name. Section 2(*m*) of the Act defines "principal employer" to mean a person for whom or on whose behalf any contract labour is engaged or employed in an establishment. Section *2*(*h*) of the Act defines "establishment" to mean any place or premises including the precincts thereof in which or in any part of which any manufacturing process connected with the making of beedi or cigar or both is being, or is ordinarily, carried on and includes an industrial premises. Section 2(*i*) of the Act defines 'industrial premises' to mean any place or premises in which any industry or manufacturing process connected with the making of beedi or cigar or both is being or is ordinarily carried on with or without the aid of power.

32**.** These definitions indicate these features. First, there are workers in industrial premises and workers in an establishment. Second, the Act recognises home-workers. Third,

the Act recognises contract labour by or through contractor. Fourth, any person who is given raw materials by an employer or a contractor is an employee. Again, any person though not employed by an employer or a contractor but working with the permission or under agreement with the employer or a contractor is an employee. Fifth, in relation to contract labour the principal employer is a person for whom and on whose behalf labour is engaged or employed in an establishment. Sixth, the employer in relation to other labour is a person who has ultimate control over the affairs of any establishment or who has by reason of advancing money, supplying goods or otherwise a substantial interest in the affairs of any establishment.

33**.** The two classes of employers are broadly defined as the employer and the principal employer. The first kind is the manufacturer who directly employs labour. Such a manufacturer becomes an employer within the meaning of Section 2(*g*)(*b*) of the Act by engaging labour. The second class of employer is the principal employer who through a contractor as defined in Section 2(*a*) of the Act engages labour which is known as contract labour. This labour is engaged by or on behalf of the manufacturer who becomes the principal employer. The third category of employer is a contractor who engages labour for executing work for and on his own behalf. Such a contractor may undertake work from a manufacturer or a trade mark holder but he becomes the principal employer in relation to contract labour on the ground that the labour is engaged for and on his own behalf. The fourth class of employer is where a contractor becomes what is known as sub-contractor, of a contractor. A contractor in such a case would ask the sub-contractor to engage labour for and on behalf of the contractor. In such a case the contractor would be the principal employer because the sub-contractor is engaging contract labour for and on behalf of the contractor who is the principal employer. The fifth class of employer is where a person by reason of advancing money or supplying goods or otherwise having a substantial interest in the control of any establishment becomes the employer of labour. To illustrate, a mortgagee in possession of an industrial premises, a hypothecatee of goods manufactured in industrial premises or in any establishment, a financier in relation to a manufacturer or a contractor or a sub-contractor may become employer by reason of such consideration mentioned in the Act.

34**.** In cases where the manufacturer or trade mark holder himself employs labour there is direct relationship of master and servant and therefore liability is attracted by reason of that relationship. There cannot be any question of unreasonableness in such a case. In the second category the manufacturer or trade mark holder engages contract labour through a contractor and he becomes the principal employer. Though such labour may be engaged by a contractor with or without the knowledge of the manufacturer or trade mark holder, this contract labour is engaged for the principal employer who happens to be the trade mark holder or the manufacturer. The liability arises by reason of contract labour engaged for or on behalf of the principal employer. In the third category, the contractor becomes the principal employer because the contractor engages labour for or on his own behalf. Where the contractor engages labour for the manufacturer it is not unreasonable restriction to impose liability on the manufacturer for the labour engaged by the manufacturer through the contractor. It is important to notice that the Act fastens liability on the person who himself engages labour or the person for whom and on whose behalf labour is engaged or where a person has ultimate

control over the affairs of the establishment by reason of advancement of money or of substantial interest in the control of the affairs of the establishment.

35**.** Therefore, the manufacturers or trade mark holders have liability in respect of workers who are directly employed by them or who are employed by them through contractors. Workers at the industrial premises do not present any problem. The manufacturer or trade mark holder will observe all the provisions of the Act by reason of employing such labour in the industrial premises. When the manufacturer engages labour through the contractor the labour is engaged on behalf of the manufacturer, and the latter has therefore liability to such contract labour. It is only when the contractor engages labour for or on his own behalf and supplies the finished products to the manufacturer that he will be the principal employer in relation to such labour and the manufacturer will not be responsible for implementing the provisions of the Act with regard to such labour employed by the contractor. If the right of rejection rests with the manufacturer or trade mark holder, in such a case the contractor who will prepare beedis through the contract labour will find it difficult to establish that he is the independent contractor. If it is a genuine sale transaction by the contractor to the manufacturer or trade mark holder it will point in the direction of an independent contractor.

36**.** This Court in ***Dewan Mohideen Sahib*** **v.** ***Industrial Tribunal, Madras*** [AIR 1966 SC 370] said that the so called independent contractor in that case was supplied with tobacco and leaves and was paid certain amounts for the wages of the workers employed and for his own trouble. The so called independent contractor was merely an employee or an agent of the appellant in that case. The so called independent contractor had no independence at all. The proprietor could at his own choice supply raw material or refuse to do so. The contractor had no right to insist on supply of raw materials to him. The work was distributed between a number of so called independent contractors, who were told to employ not more than 9 persons at one place to avoid regulations under the Factories Act. This Court held that the relationship of master and servant between the appellant and the employees employed by the independent contractor was established in that case. If it is found that manufacturers or trade mark holders are not responsible on the ground that the person with whom they are dealing are really independent contractors then such independent contractors will have to be considered as principal employers within the meaning of the Act.

37**.** The contention on behalf of the petitioners and the appellants is that in common law a person cannot be made responsible for actions of an independent contractor and that he should not be penalised, for the contravention of any law by an independent contractor is to be examined in view of the language employed in defining the expressions contract labour, contract, establishment, employer and principal employer. It was particularly said that when home-workers were given tobacco and leaves directly by the manufacturers the home-workers would not be under their control and the manufacturers should not be made responsible for providing any amenities or leave facilities for those home-workers.

38**.** This Court in ***Silver Jubilee Tailoring House*** **v.** ***Chief Inspector of Shops and Establishments*** [(1974) 3 SCC 498] discussed the question as to whether employer-employee relationship existed between the tailoring house and the workers in that case. The definition of a person employed in that case was a person wholly or principally employed therein in connection with the business of the shop. The workers were paid on piece rate basis. They

attended the shops if there was work. The rate of wages paid to the workers was not uniform. The rate depended upon the skill of the worker and the nature of the work. The workers were given cloth for stitching. They were told how the stitching was to be done. If they did not stitch it according to the instructions, the employer rejected the work. The worker was asked to re-stitch. If the work was not done according to the instruction no further work was given to a worker. A worker did not have to make an application for leave if he did not come to the shop on a day. If there was no work, the employee was free to leave the shop. All the workers worked in the shop. Some workers could take cloth for stitching to their homes.

39**.** Mathew, J., speaking for the Court referred to the decisions of this Court and English and American decisions and came to these conclusions. First, in recent years the control test as traditionally formulated has not been treated as an exclusive test. Control is an important factor. Second, the organisation test viz. that the workers attend the shop and work there is a relevant factor. If the employer provides the equipment this is some indication that the contract is a contract of service. If the other party provides the equipment this is some evidence that he is an independent contractor. No sensible inference can be drawn from the factory of equipment where it is customary for servants to provide for their own equipment. Little weight can today be put upon the provisions of tools of minor character as opposed to plant and equipment on a large scale. Third, if the employer has a right to reject the end product if it does not conform to the instructions of the employer and direct the worker to re-stitch it, the element of control and supervision as formulated in the decisions of this Court is also present. Fourth, a person can be a servant of more than one employer. A servant need not be under the exclusive control of one master. He can be employed under more than one employer. Fifth, that the workers are not obliged to work for the whole day in the shop is not very material. In the ultimate analysis it would depend on the facts and circumstances of each case in determining the relationship of master and servant.

40**.** The present legislation is intended to achieve welfare benefits and amenities for the labour. That is why the manufacturer or trade mark holder becomes the principal employer though he engages contract labour through the contractor. He cannot escape liability imposed on him by the statute by stating that he has engaged the labour through a contractor to do the work and therefore he is not responsible for the labour. The contractor in such a case employs the labour only for and on behalf of the principal employer. The contractor being an agent of the principal employer for manufacturing beedis is amenable to the control of principal employer. That is why the statute says that even if the contractor engages labour without the knowledge of the employer the principal employer is answerable for such labour because the labour is engaged for or on his behalf. The act and the Rules thereunder prescribe maintenance of log books and registers. Where the manufacturer or the trade mark holder engages labour directly, the manufacturer maintains registers and log books. Where the manufacturer engages contract labour through a contractor the manufacturer will require the contractor to maintain such log books of the contract labour and through such books and registers will keep control over not only the contractors but also the labour.

41**.** The principal employer is the real master of the business. He has real control of the business. He is held liable because he exercises supervision and control over the labour employed for and on his behalf by contractor. The benefits of the welfare measure reach the

workmen only by direct responsibility of the principal employer, the basis of the welfare measure is in the interest of the workers with regard to their health, safety and wages including benefits of leave and family life. The Bombay High Court and the Kerala High Court struck down the provisions contained in Sections *2*(*g*)(*a*) and 2(*m*) of the Act in regard to the principal employer being liable for contract labour as an unreasonable restriction on the manufacturer's right to carry on business. This view proceeds on the basis that the principal employer is liable for acts of the independent contractor. The Act does not define an independent contractor, nor mention the independent contractor. The Act speaks of the principal employer in relation to contract labour and employer in relation to other labour. When a contractor engages labour for or on behalf of another person that other person becomes the principal employer. The Attorney General rightly said that if it were established on the facts of any particular case that a person engaged labour for himself he would be the principal employer of contract labour. In such an instance there is no question of agency on behalf of another person.

42**.** In cases where an industrial manufacturer finds it convenient to give work on contract rather than do it employing his own man he cannot have the advantages of employing the labour without corresponding obligations. If the contractors could be made responsible for the working conditions of labour or their wages or their leave or their other benefits then no question would arise. It is not uncommon for labourers to work for a contractor on terms which are designed to satisfy the law that they are not servants but independent contractors.

43**.** In the present case, it is not material to find out as to who can be called an independent contractor. It can be said that independent contractors are those who employ labour for and on behalf of themselves in so far as the present Act is concerned. The only scope for inquiry is whether a person has employed labour for and on his own behalf. If the answer be in the affirmative then such a contractor would be a principal employer within the meaning of Section 2(*g*)(*a*).

44**.** It appears that the principal employer or the employer, as the case may be, is liable on the ground that the labour is employed for or on behalf of the principal employer or the employer. In relation to contract labour the principal employer is the person for whom or on whose behalf any contract labour is engaged in any establishment. An employer in relation to other labour is the person who has the ultimate control over the affairs of any establishment or has a substantial interest in the control of the affairs of any establishment as defined in Section 2(*g*)(*b*) of the Act. There is no vicarious liability in the case of the principal employer or in the case of employer. The Act does not define an independent contractor. The Act does not prevent an independent contractor from being the principal employer in relation to contract labour. It will be a question of fact in each case as to who is the person for whom or on whose behalf contract labour is engaged. If such a contractor who is referred to as an independent contractor employs labour for himself the liability will attach to him as the principal employer and not to the manufacturer or trade mark holder. There is no restriction on the right of the manufacturer or the trade mark holder to carry on business. They are liable under the Act for contract labour employed for or on behalf of them.

45. For the foregoing reasons the provisions of the Act in particular contained in Section 2(*g*)(*a*), 2(*g*)(*b*) and 2(*m*) are constitutionally valid and do not impose any unreasonable restriction on the manufacturer or trade mark holder.

46. On behalf of the petitioners and the appellants, it is said that Section 26 of the Act gives substantive rights with regard to leave and Section 27 of the Act is the procedural part in computing wages. The contention advanced was that Section 26 of the Act speaks of employees in an establishment and, therefore, these Sections do not apply to home-workers. The contentions are that Sections 26 and 27 of the Act cast an unreasonable burden and impose obligations which are not practically capable of fulfilment and are thus violative of Article 19(1)(*f*) and (*g*) of the Constitution. In any event Sections 26 and 27 of the Act are said to be unenforceable in regard to home-workers and are, therefore, violative of Article 19(1)(*f*) and (*g*) so far as the same are applicable to home-workers. These two Sections deal with leave and wages during leave period. Broadly stated, Section 26 allows leave at the rate of one day for every 20 days of work performed by an adult employee during the previous calendar year. In the case of a young person leave is at the rate of one day for every 15 days of work during the previous calendar year. There are provisions as to calculation of leave which are not material in the present case.

47. Under Section 27 of the Act an employee shall be paid at the rate equal to the daily average of his full time earning for the days on which he had worked during the month immediately preceding his leave exclusive of any over time earnings and bonus but inclusive of dearness and other allowances. There are two explanations. The first explanation states that the expression "total full time earning" includes cash equivalent to the advantage accruing through the concessional sale to employees of foodgrains and other articles, as the employee is for the time being entitled to, but does not include bonus. The second explanation states that for the purpose of determining the wages payable to a home-worker during leave period or for the purpose of payment of maternity benefit to a woman home-worker "day" shall mean any period during which such home-worker was employed, during a period of twenty four hours commencing at midnight, for making beedi or cigar or both.

48. The word "establishment" is defined in Section 2(*h*) of the Act to mean any place or premises including the precincts in which or in any part of which any manufacturing process connected with the making of beedis or cigars or both is carried on and it includes an industrial premises. Section 2(*i*) of the Act defines "industrial premises" to mean any place or premises not being a private dwelling house where the industry or manufacturing process of making beedis or cigar is carried on. An employee is defined in Section 2(*f*) of the Act to mean any person employed directly or through any agency in any establishment and include any labour who is given raw materials by an employer or contractor at home referred to as the home-worker and any person employed by an employer or a contractor but working at the premises with the employer or contractor. Therefore, the words "employed in an establishment" in Section 26 of the Act are referable to home-workers as well. The second explanation to Section 27 of the Act also speaks of determination of wages payable to home-worker during leave period.

49. It was said that the words "total full time earnings" occurring in Section 27 of the Act were inapplicable to home-workers for these reasons.

50**.** First a home-worker with the assistance of his family members could collect large earnings in a month preceding the month in which he would take leave. This was said to be an unreasonable restriction on an employer inasmuch as a home-worker would not work hard or perhaps at all for a considerable period of time and would work only in the month preceding which he would take leave. It is not possible for a home-worker to increase his earnings because the employer will have control over raw materials supplied to home-worker as also on the daily turnover. An employer is in a position to prevent malpractices or abuse of taking more materials to make a higher income. It is also reasonable to hold that an employer will not allow an employee to concentrate on increasing the income.

51**.** It was secondly said that Section 27 of the Act did not prescribe the minimum number of days an employee should work before he was entitled to annual leave wages. Reference was made to Section 79(1) of the Factories Act 1948 which provides for 240 days of work as minimum for entitlement of annual leave. The provision in section 26 of the Act is that for every 20 days one day's leave is allowed. If any worker does not work hard one will not be entitled to leave as contemplated in the Act. The basis of calculating one day's leave for every 20 days of work is also adopted in the case of Government servants. [*see* Central Civil Service Leave Rules, 1972 Rules 26 and 2(m).] Instead of being unreasonable it can be said to be an impetus to a servant to put in the maximum of work in order to obtain the maximum amount of leave. The entitlement to leave under Section 27 of the Act is based on the number of days of actual work. It is, therefore, not an unreasonable restriction on the employer.

52**.** Thirdly, it is said that the payment of leave wages at the rate equal to the daily average of his total full time earnings in the case of home-workers is unreasonable. Reference is made to Section 22 of the Act which speaks of notice of periods of work in industrial premises. Section 22 of the Act is not applicable to home-workers. In the case of home-workers it is said that they are free to do work at any time and for any length of time in a day even for 24 hours a day. It is, therefore, said that it will be difficult to calculate the total full time earnings of home-workers.

53**.** The words in Section 27 of the Act are "total full time earnings". One meaning of the words in the case of home-workers will be daily average hours of work done by home-workers during the last month before leave provided such average does not exceed the daily period of work as prescribed in a notice under Section 22 of the Act. Such a construction would give not only full meaning to the words "full time earnings" but would also place home-workers and workers in industrial premises in the same position with regard to their leave wages. It will not cast unreasonable burden on the employer in the form of leave wages disproportionate to the amount of work done by the home-workers.

54**.** Another meaning is that the total full time earnings would be the actual total earnings as far as the workers in industrial premises as well as home-workers are concerned. With regard to the second meaning the words "full time" will not have any restriction as to hours of work. The result may be that a home-worker may have longer hours of work and larger income compared with the worker in the industrial premises, but such longer hours of work can be controlled by an employer both with regard to giving raw materials and allowing longer hours of work.

55**.** As a matter of fact it is found that home-workers can turn out 700 to 1000 pieces a day. That is the view expressed in the Report of the Royal Commission on labour in India 1931 as also the Labour Investigation Committee Report, 1944 and the Report of the Court of Enquiry appointed by the Government of Madras, 1947. The minimum wages prescribed by various states for these home-workers are between Rs 2 to Rs 4.30 for rolling 1000 pieces. Therefore, the financial burden on account of leave wages will not be higher to constitute any unreasonable restriction.

56**.** The Bombay High Court in the present appeals said that the provisions of Sections 26 and 27 of the Act constitute unreasonable restriction not only with regard to home-workers but also with regard to employees in industrial establishment. The reason given is that if employees in industrial premises do not choose to work for all days for the full hours notified it will be equally impossible to determine what his full time earnings will be and what his daily average of the full time earnings for the days on which he worked during the preceding month will be. The Mysore High Court in the present appeal correctly said that the home-workers will get wages for the leave period corresponding to the number of beedis manufactured by him for a particular employer. The hours of work will in that case be immaterial, because if he worked for less number of hours he would obtain lesser payment. There will thus be no difficulty in computing wages payable for the annual leave period. The home-worker will get leave wages corresponding to his actual earning just as the worker in the industrial premises will get leave wages corresponding to his full time earnings.

57**.** The Andhra Pradesh High Court in the present appeal said that home-workers carry on their rolling work at homes which are neither establishments nor industrial premises. The word "establishment" as defined in Section 2(*h*) of the Act relates to home-workers as well. It is only industrial premises as defined in Section 2(*i*) of the Act which excludes private dwelling houses.

58**.** The home-workers are not required to work for a specified number of hours a day. The fact that Sections 17 to 23 of the Act can have no application to home-workers but only to persons employed in industrial premises does not render Sections 26 and 27 of the Act inapplicable to home-workers. The express language of Sections 26 and 27 of the Act is relateable to home-workers. They work in establishments. The daily average of total full time earnings for the days worked during the month immediately preceding the leave is applicable to home-workers. It is because payment to home-workers is made at piece rate viz. for the number of beedis rolled. The Madras High Court said that Sections 26 and 27 of the Act have imposed unreasonable restrictions on manufacturers in regard to employees in industrial premises. The Madras High Court held that for working 11 days a worker would be entitled to one day as annual leave with wages. The Act does not say so. The Act provides that any fraction of leave for half a day or more will be treated as one day's full leave. Therefore, if on a calculation of entire leave at the rate of one day for every 20 days of work, there is any fraction of more than one day's leave so calculated or earned it would be treated as one day. It is only where there is fraction of leave earned that for such 11 days work one day's leave is to be given. It is not same as providing one day's leave for working only 11 days in all cases. The entitlement under the Act to one day's leave for every 20 days shows that the period of 20 days is a minimum period prescribed for earning one day's leave.

59**.** The structure of Sections 26 and 27 of the Act is two-fold. First, so far as workers employed in industrial premises are concerned they are entitled to annual leave with wages provided they work for at least 20 days a year, for full hours of work specified in the notice. Therefore, Sections 26 and 27 of the Act will not apply to workers in industrial premises who have not worked for full working hours according to the notice for 20 days a year. Second, Sections 26 and 27 of the Act will apply to home-workers who work at least 20 days a year and the day within the expression 20 days will mean any period of day because there is no notified hour of work.

60**.** In view of the fact that the two Sections are applicable both to workers in industrial premises and home-workers the expression "total full time earnings" occurs in Section 27 of the Act. Section 17 deals with working hours. Section 22 speaks of notice of periods of work. Sections 17 and 22 refer to industrial premises and are therefore not applicable to home-workers. The total full time earnings for workers in industrial premises will attract the specified periods of work contemplated in Section 22 of the Act. With regard to a home-worker the wages during leave period will be calculated with reference to the daily average of his total full time earnings for the days on which he had worked during the preceding month. In the case of home-workers it will be the average of 30 days earning. To illustrate, if the worker has earned different sums on different days during the month the sums will be added for the purpose of arriving at an average. The computation in the case of home-workers will be first with reference to the total earning during the month and full time earning is the average thereof. The second explanation to Section 27 of the Act shows that for the purpose of determining the wages payable to home-worker during leave period day shall mean any period during which such home-worker, was employed during any period of 24 hours. Therefore, so far as the home-worker is concerned day shall mean any period.

61**.** The manner in which leave wages for workers in industrial premises and home-workers are to be calculated may be illustrated with reference to the Beedis and Cigar Workers (Conditions of Employment) Mysore Rules, 1969. Section 44(2) of the Act provides that the State Government may make rules inter alia for the records and register they shall maintain in establishments in compliance with the provisions of the Act and the rules thereunder. Establishment means both industrial premises and any private house where the home-workers carry on their work. Rule 33 of the Mysore Rules framed under the Act speaks of maintenance of records and registers in Form XIII. Form XIII has 8 columns as the muster roll of employees in industrial premises. Rule 33(2) of the Mysore Rules speaks of records for home-workers in Form XIV. There are four columns showing the date, whether work was done, number of beedis manufactured and the wages received. At the foot of Form XIV it shows the total number of days worked in the month. Therefore, in the case of home-workers wages are calculated on the basis of these records, namely, the number of days worked and second the amount of wages received. In the case of home-workers hours of work are not necessary. In the case of employees in industrial premises columns 8 and 9 show inter alia the group, relay, shift number and period work. With regard to home-workers payment is made at the rate of 1000 pieces of beedis. Leave with wages in the case of home-workers is on that basis of payment. The log book is a form of guarantee and security for both the employer and the worker in regard to quality of work and relative payment.

62**.** Reference was made to four earlier decisions of this Court for the purpose of showing that Sections 26 and 27 are inapplicable to home-workers. These decisions are ***Shri Chintaman Rao*** **v.** ***State of Madhya Pradesh***, ***Shri Birdhichand Sharma*** **v.** ***First Civil Judge, Nagpur*** [AIR 1961 SC 644], ***Shankar Balaji Waje*** **v.** ***State of Maharashtra*** [AIR 1962 SC 517] and ***Bhikuse Yamasa Kshatriya*** **(*P*)** ***Ltd.*** **v.** ***Union of India*** [AIR 1963 SC 1591]. These four cases were decided with reference to the Factories Act. Sections 79 and 80 of the Factories Act were considered there. These two Sections are in similar language to Sections 26 and 27 of the Act. The only difference is that unlike Section 79 of the Factories Act, in Section 26 of the Act there is no requirement of working for 240 days a calendar year for entitlement to annual leave and further that in Section 26 of the Act the words used are "employee" in place of the word "worker" and the word "establishment" in place of the word "factory" in the Factories Act.

63**.** In ***Chintaman Rao*** case this Court held that the three ingredients and concepts of employment are first there must be an employer, second, there must be an employee and the third, there must be a contract of employment. In ***Chintaman Rao*** case certain independent contractors known as Sattedars supplied beedis to the Manager of a beedi factory. The Sattedars manufactured the beedis in their own factories or they entrusted the work to third parties. The Inspector of Factories found in the beedi factory certain Sattedars who came to deliver beedis manufactured by them. The owner of the factory was prosecuted for violation of Sections 62 and 63 of the Factories Act for failure to maintain the register of adult workers. It was held that the Sattedars and their "coolies" (*sic*) were not workers within the definition of Section 2(1) of the Factories Act. The ratio was that the Sattedars were not under the control of the factory management and could manufacture beedis wherever they pleased. Further the "coolies" (*sic*) were not employed by the management through the Sattedars.

64**.** In ***Birdhichand Sharma*** case the appellant employed workmen in factory. The workmen were not at liberty to work at their houses. Payment was made for piece rates according to the amount of work done. The workmen applied for leave for 15 days. The appellants did not pay their wages. The appellant contended that the workmen were not workmen within the meaning of the Factories Act. It was held that the workmen could not be said to be independent contractors but were workmen within the meaning of Section 2(1) of the Factories Act. A distinction was sought to be drawn between workmen and independent contractors. It was held that though the workmen could come and go when they liked, they were piece rate workers within the meaning of the Factories Act. If the worker did not reach factory before midday he would be given no work. He was to work at the factory. He could not work elsewhere. He would be removed if he was absent for 8 days. His attendance was noted. If his work did not come up to the standard the pieces prepared would be rejected. The leave provided under Section 79 of the Factories Act was held to be a matter of right when a worker had put in a minimum number of working days.

65**.** In ***Shankar Balaji Waje*** case it was held that the labourers who used to roll beedis in the factory were not workers within the meaning of the Factories Act. ***Birdhichand Sharma*** case was distinguished on the facts. The minority view was that the workers in ***Shankar Balaji Waje*** case were of the same type as ***Birdhichand Sharma*** case. In ***Shankar Balaji Waje*** case the majority view was that there was contract of service. The worker was not

bound to attend the factory for any fixed hours. He could be absent from the work any day he liked and for ten days without informing the appellant. He had to take permission if he was to be absent for more than 10 days. The worker was not bound to roll beedis at the factory. He could do so at home with the permission of the appellant. There was no actual supervision. Beedis not up to the standard could be rejected. Workers were paid at fixed rates.

66**.** In ***Bhikuse Yamasa*** case this Court had to consider whether a notification under Section 85 of the Factories Act giving the beedi rollers benefits provided to workers in the Factories Act was valid. Beedi rollers were refused benefits by the owners of beedi manufacturing establishments. Therefore, the State Government issued notification under Section 85 of the Factories Act. Section 85 of the Factories Act provides that the State Government may declare that all or any of the provisions of the Act shall apply to any place where a manufacturing process is carried on notwithstanding that the number of persons employed therein is less than the number specified in the definition of factory or where the persons working therein are not employed by the owner but are working with the permission of, or under agreement with, such owner. The State Government designated certain places to be deemed factory and the persons working there to be deemed workers. This Court said that extension of the benefits of the Factories Act to premises and workers not falling strictly within the purview of the Factories Act is intended to serve the same purpose. On this reasoning the provisions for the benefit of deemed workers were held to be reasonable within the meaning of Article 19(1)(*g*) of the Constitution.

67**.** These four decisions were relied on by counsel for the petitioners and the appellants to show that home-workers would not be entitled to leave on the ground that Sections 26 and 27 of the Act were unworkable in regard to home-workers and constituted unreasonable restrictions. The imposition of liability to afford to home-workers benefits like annual leave with wages cannot be said to be unreasonable restriction on the right of the owner to carry on his business. In the Act, the word, "employee" includes a home-worker. The word "establishment" applies to a private house. The second explanation to Section 27 of the Act indicates that a home-worker is dealt with by the Section. Sections 26 and 27 of the Act are to be read together. In ***Birdhichand Sharma*** case this Court held that if a worker had put in a number of working days he would be entitled to leave. This Court did not go into a question as to what the meaning of the word "day of work" would be to entitle a worker annual leave under Section 79 of the Factories Act in ***Birdhichand Sharma*** case.

68**.** In the present case the Act contemplates that home-workers are at liberty to work at any time and for any number of hours a day. The Act cannot be said to be not applicable to home-workers. The Act has made a distinction between the two types of workers and has made the Act applicable to both the types of workers. Even with regard to workers in industrial premises where period of work is notified it is not obligatory on the part of the employer to allow an employee to work in the industrial premises for the whole of the notified period of work. The employee can be asked to work for the whole of the notified period of work which will not exceed 9 hours a day or 48 hours a week as provided in Section 17 of the Act. In ***Shankar Balaji Waje*** case the majority view was that the expression "total full time earnings" mean earnings in a day by working full time on that day and full time was to be in accordance with the period given in the notice displayed in the factory for the particular day.

On that ground the workers in ***Shankar Balaji Waje*** case were held not to be entitled to wages for the leave period because such wages could not be calculated when the terms of work were such that they could come and go when they liked and no period of work was mentioned with respect to workers. The majority view in ***Shankar Balaji Waje*** case will not apply to Sections 26 and 27 of the Act because the home-workers are entitled to wages during the leave period and such wages do not in the case of home-workers depend upon the consideration whether a particular home-worker works for a whole of the notified period of work. The basis of calculation of wages in the case of home-workers is the daily average of his total full time earnings for the days on which he had worked during the month immediately preceding his leave. If a home-worker does full time work by rolling out 1000 pieces he will get corresponding amount of wages. Both the factory workers in industrial premises and home-workers in establishments are similarly placed by proper control over or regulation of supply of raw materials to home-workers. Just as the total full time earnings of the worker in an industrial premises are calculated with reference to hours of work each day, similarly the full time earnings of the home-worker are calculated by the earnings of each day which are kept under control by supply of measured raw materials to produce the requisite number of beedis which a worker can produce a day within his hours of work in establishment. So far as home-workers are concerned, the payment is made at piece rate and it is not material in their case about specified hours of work because they will get lesser payment if they will not work for the same number of hours as workers in industrial premises. The provisions of Sections 26 and 27 are applicable to home-workers and workers in industrial premises are also capable of being made applicable without any reasonable restrictions on employers.

69**.** It has been contended that Section 31 of the Act which provides one month's notice in lieu of notice of dismissal was an unreasonable restriction. The reason advanced was that the Act has not defined the word "wages" and therefore it is not possible to calculate wages. Section 27 of the Act prescribed the rate for calculating wages during the period of leave. Section 39(1) of the Industrial Disputes Act applies to matters in respect of every industrial premises. Section 2(*rr*) of the Industrial Disputes Act defines wages. The definition of wages in the Industrial Disputes Act applies to workers in industrial premises contemplated by the Act. Home-workers are not included in industrial premises because they work in private dwelling houses which are establishments. The definition of wages in the Industrial Disputes Act will apply to workers who are paid on monthly basis. Section 28(1) of the Act empowers the State Government to direct that the provisions of the Payment of Wages Act, 1936 shall apply to employees in establishments to which the Act applies. Section 2(6) of the Payment of Wages Act defines "wages" to include *inter alia* any remuneration to which the person employed is entitled in respect of any leave period. Some aid may be had from the definition of wages in the Payment of Wages Act viz. wages include leave wages. Therefore, the word "wages" in Section 31 of the Act will mean wages which are calculated under Section 27 of the Act. This can be calculated both in the cases of workers in industrial premises and home-workers in establishments. Therefore, the provisions contained in Section 31 of the Act cannot be said to be unreasonable restrictions.

70. The petitioners and the appellants next contended that Rule 37 of the Maharashtra Rules and Rules 29 of the Mysore Rules framed under Section 44 of the Act imposed unreasonable restrictions on the beedi and cigar manufacturers. Rule 37 of the Maharashtra Rules provides that no employer or contractor shall ordinarily reject as sub-standard or chhat or otherwise more than 5 per cent of the beedis or cigars of both received from the worker including a home-worker. Rule 37(2) of the Maharashtra Rules further provides that where any beedi or cigar is rejected as sub-standard or chhat or otherwise on any ground other than the ground of wilful negligence of the worker, the worker shall be paid wages for the pieces so rejected at one half of the rates at which wages are payable to him for the beedis or cigars or both which have not been so rejected.

71. Rule 29 of the Mysore Rules provides that no employer or contractor shall ordinarily reject as sub-standard or chhat or otherwise more than 2 per cent of the beedis or cigars or both received from the worker including a home-worker. It is also provided there that the employer or contractor may effect such rejection up to 5 per cent for reasons to be recorded and communicated in writing to the worker.

72. Rule 29 of the Kerala Rules is identical to Rule 29 of the Mysore Rules except that instead of 2 per cent it provides for 2.5 per cent as a limit for rejection.

73. The Kerala High Court held that Kerala Rule 29 fixes arbitrary percentage and is not in the interest of the general public. The imposition of 5 per cent by the proviso to Rule 29 was said by the Kerala High Court to be arbitrary. It was said that the percentage of rejection might be higher than 5 per cent but the fixed limit of 5 per cent would have this bad consequence, it is that quality of beedis would go down if the workers were assured that more than 5 per cent would not be rejected.

74. The Mysore High Court rejected the contention that Mysore Rule 29 imposes an unreasonable restriction. The reason given by that High Court was as follows. The argument that sub-standard beedis or cigars in excess of 5 per cent cannot be rejected by the employer is unsound. Ordinarily 2 per cent rejection is permitted. Rejection up to 5 per cent is permissible only after recording reasons therefor. But if the employer finds that the quantity of sub-standard beedis is about 5 per cent, the matter is to be referred to the Inspector. Therefore, Rule 29 does not compel the employer to accept sub-standard beedis when the rejection is above 5 per cent.

75. The Bombay High Court upheld Rule 37 of the Maharashtra Rules which allows rejection of more than 5 per cent. The 5 per cent rejection is said by the Bombay High Court to be an outer limit. It does not mean according to the Bombay High Court that the rejection must be 5 per cent. It is said that the contractors by reason of their experience will find 5 per cent rejection to be reasonable. The experience suggests that the outer limit of 5 per cent is fairly reasonable. It is difficult to imagine that no limit should be fixed. The Bombay High Court further found that even for sub-standard beedis there is a market though at a lesser rate. The Bombay High Court further found that pilfering of tobacco was an accepted vice of the industry. Inspite of that malady rejection in the industry hardly exceeded 3 per cent. The Bombay High Court found 5 per cent rejection to be reasonable.

76. The maximum limit of 5 per cent for the rejection of beedis is, therefore, based on experience in the industry and secondly the employer can reject more than 5 per cent by raising a dispute before the appropriate authority.

77. On behalf of the petitioners and the appellants it was said that the word "sub-standard" by itself would offer no guidance for rejection and confer arbitrary power. Section 39(1) of the Act provides that the provisions of the Industrial Disputes Act shall apply to matters arising in respect of every industrial premises and Section 39(2)(*c*) of the Act provides that notwithstanding anything contained in sub-section (1) a dispute between an employer and employee relating to the payment of wages for beedi or cigar or both rejected by an employer shall be settled by such authority and in such manner as the State Government may by Rules specify in that behalf. Section 44(2)(*r*) of the Act provides for making of rules with regard to the manner in which sorting or rejection of beedi or cigar or both and disposal of rejected beedi or cigar or both shall be carried out. The Mysore Rule 27 provides that any dispute between an employer and employee in relation to rejection by the employer of beedi or cigar or both make by an employee may be referred in writing by the employer or the employee or employees to the Inspector for the area who shall after making such enquiry as he may consider necessary and after giving the parties an opportunity to represent their respective cases, decide the dispute and record the proceedings in form X. Form X relates to record of decision of Order. Various particulars, inter alia, are substance of the dispute, substance of the evidence taken and findings and statement of the reasons therefor. There is also a right of appeal from the decision of the Inspector to the Chief Inspector.

78. It therefore appears that the Rules about rejection and fixing maximum limit of 5 per cent are reasonable and fair. First, experience in the industry as recorded in the Report of Minimum Wages Committee supports such limit of 5 per cent as normal and regular. Second, inspite of 5 per cent maximum limit it is permissible to the employer to reject more than 5 per cent. For that a dispute is raised before the appropriate authorities set up under the Rules. The State Government under Section 44(2)(*r*) and (*s*) of the Act is empowered to make Rules in respect of the manner in which sorting or rejection of beedi or cigar or both and disposal of rejected beedi or cigar or both shall be carried out and the fixation of maximum limit of rejection of beedi or cigar or both manufactured by an employee. Section 39(2) of the Act provides that a dispute between an employer and employee relating inter alia to rejection by the employer of beedi or cigar or both made by an employee and the payment of wages for beedi or cigar rejected by the employer shall be settled by such authority and in such manner as the State Government may by Rules specify in that behalf. Rule 27 of the Mysore Rules as well as Rule 27 of the Kerala Rules provide that a dispute between an employer and employee or employees in relation to rejection by the employer of beedi or cigar or the payment of wages for the beedi or cigar rejected by the employer may be referred in writing by the employer or employee to the Inspector for the area. The Inspector after hearing the parties shall decide the issue. The aggrieved party has the right of appeal to the Chief Inspector.

79. Under Rule 29 of the Mysore Rules rejection of more than 2 per cent and up to 5 per cent is required to be for reasons in writing. Rule 37 of the Maharashtra Rules provides for rejection up to 5 per cent without any obligation to give reasons. It was said by the petitioners that the Mysore and Kerala Rules fixed the limit for rejection but the Maharashtra Rule did

not do so. Both the Rules fixed 5 per cent as the maximum limit for rejection. The Mysore and the Kerala Rules have nothing corresponding to Maharashtra Rule 37(2) requiring payment at half the rates for beedis rejected as sub-standard, if the same was not due to the wilful negligence of the employee. It was, therefore, said that either up to 5 per cent rejection under Maharashtra Rule 37 or rejection of more than 5 per cent the employer was under an obligation to make payment at half of the rate as rejected beedis if such rejection was not due to the wilful negligence of the employee.

80**.** It has, therefore, to be ascertained as to whether the Rules prohibit employer from rejecting more than 5 per cent even if they are found to be sub-standard and secondly whether the requirement to pay wages at one half of the rate for the rejected beedis is a reasonable restriction. The Rules provide for rejection up to 5 per cent. The Rules further used the word "ordinarily" in regard to such rejection. In case of rejection of more than 5 per cent Rule 27 of the Mysore Rules and Rule 37 of the Maharashtra Rules provide for raising of a dispute in regard to such rejection. The dispute contemplated is in relation to rejection of beedis and the payment of wages for the rejected beedis. The words "rejection" and "rejected" indicate that the dispute is raised because of the rejection of beedis. The contention advanced on behalf of the petitioner that before a dispute is raised no rejection is possible is erroneous. The dispute arises because of rejection. Therefore, Rules 27 and 29 of the Mysore Rules and Rule 27 of the Kerala Rules do not impose any unreasonable restriction on the right of rejection.

81**.** Maharashtra Rule 27 also permits rejection of more than 5 per cent and raising of disputes. The contention on behalf of the petitioners that the Maharashtra Rule which requires payment at one half of the rate for the rejected beedis on any ground other than the ground of wilful negligence of the worker is an unreasonable restriction is not correct. The Bombay High Court correctly held that the experience in the industry is that there is a market for sub-standard beedis. It is also reasonable to hold that home-workers will be interested in seeing that the beedis are not sub-standard because in the process home-workers would be earning less. The Maharashtra Rule is intended to eliminate exploitation of illiterate workers who are mostly women. The Rules with regard to rejection are, therefore, reasonable. It is also open to the employers to raise dispute for rejection above 5 per cent.

82**.** The petitioners and the appellants challenged Section 37(3) of the Act as unworkable. That sub-section provides that the provisions of the Maternity Benefit Act, 1961 shall apply to every establishment as if such establishment were an establishment to which the said 1961 Act had been applied by notification under Section 2(1) of the said 1961 Act. The proviso to Section 37(3) of the Act states that Maternity Benefit Act in its application to a home-worker shall apply subject to certain modifications. The Madras High Court upheld the contention and said that since a worker in a beedi industry is not required to work regularly for any prescribed period of hours in a day or even day after day for any specified period, from the very nature of the case, provisions of the said 1961 Act are unworkable with regard to such home-workers. It may be stated that the reasonableness of Section 37(3) of the Act was not challenged. An argument which was submitted was that it was difficult to locate home-workers. That argument was not pressed in this Court. The provisions of the said 1961 Act in Sections 4 and 5 thereof deal with prohibition of employment of, or work by, women, prohibited during certain period and right of payment of maternity benefit. Section 4 of the

1961 Act does not present any difficulty because it speaks of prohibition of work by a woman in any establishment during six months immediately following the day of her delivery. Further, Section 4 provides that on a request being made by a pregnant woman she will not be required to do work of an arduous nature or work which involves long hours of standing and that period is one month immediately preceding the period of six weeks before the date of her expected delivery. Section 5(2) of the said 1961 Act provides that no woman shall be entitled to maternity benefit unless she has actually worked in any establishment for a period of not less than 160 days in the twelve months immediately preceding the date of her expected delivery. There is no difficulty with regard to working of these Sections in regard to maternity benefits to women employed in an establishment.

83. For these reasons, we held that Parliament had legislative competence in making this Act and the provisions of the Act are valid and do not offend any provision of the Constitution.

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Indian Banks Association **v.** *Workmen of Syndicate Bank*

AIR 2001 SC 946 : (2001) 3 SCC 36

S.N. VARIAVA, J. – 3. The Government of India, Ministry of Labour by an order dated 3.10.1980 referred the following dispute under Sections 7-A and 10(1)(d) of the Industrial Disputes Act between the management of 11 banks and the Deposit Collectors to the Industrial Tribunal, Hyderabad for adjudication:

> "Whether the demands of the Commission Agents or as the case may be Deposit Collectors employed in the banks listed in the annexure that they are entitled to pay scales, allowances and other service conditions to regular clerical employees of those banks is justified? If not, to what relief are the workmen concerned entitled and from which date?"

4. Before the Tribunal parties led evidence both oral and documentary. After hearing the parties the Tribunal by its award dated 22.12.1988 held that the Deposit Collectors were workmen of the Bank concerned.

6. Before the High Court it has been conceded that relief of being absorbed as regular staff of the banks in clerical cadre was not available to be granted. On this concession the High Court set aside the directions of the Tribunal to absorb the Deposit Collectors as regular staff. The High Court, however, upheld the other directions of the Tribunal regarding payment of fall back wages, conveyance allowance, gratuity, etc.

8. On behalf of the appellants it has been submitted that the Deposit Collectors could not be treated as workmen since their engagement were purely a matter of contract between the parties. It was submitted that the agreements were, in all cases, for a specific period. It was submitted that the Deposit Collectors did their work without any control or supervision of the banks. It was submitted that the Deposit Collectors could also do other works and take on other employment. It was submitted that the Deposit Collectors had no fixed time or period to devote to their work as Deposit Collectors or for their attendance in the Bank. It was submitted that these Deposit Collectors could come to the Bank at any time and make the deposits. It was further submitted that there was no qualification or age-limit for a person to be engaged as a Deposit Collector and that, in fact, many of the Deposit Collectors were well-advanced in age. It was submitted that no disciplinary action could be taken against the Deposit Collectors. It was submitted that all the abovementioned facts showed that there was no relationship of master and servant and that, therefore, these Deposit Collectors were not workmen.

9. Reliance has also been placed on Section 10 of the Banking Regulation Act. The relevant portion of Section 10 reads as follows:

> "**10.** ***Prohibition of employment of managing agents and restrictions on certain forms of employment*** – (1) No banking company –
>
> (a) shall employ or be managed by managing agent; or
> (b) shall employ or continue the employment of any person –

(i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude; or

(ii) whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company:

Provided that nothing contained in this sub-clause shall apply to the payment by a banking company of –

(a) any bonus, in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual practice prevailing in banking business;

(b) any commission to any broker (including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any other person, employed by the banking company under a contract otherwise than as a regular member of the staff of the company;"

10. It was submitted that Section 10(1)(b) clearly lays down that a banking company cannot employ any person whose remuneration or part of whose remuneration takes the form of commission or of a share in the profits of the company. It was submitted that it was an admitted position that commission was paid to Deposit Collectors. It was submitted that it can never be presumed that the banks were employing persons contrary to the provisions of the Banking Regulation Act. It was submitted that this showed that these Deposit Collectors were not employed by the banks. It was submitted that the proviso (b), which permitted payment of commission under a contract to a person who was not a regular member of the staff, was merely an extension and did not detract from the main provision which prevented employment on commission basis.

11. It was also submitted that the Deposit Collection Schemes were unremunerative and were not viable. Certain charts and figures were shown to the Court and it was submitted that the banks were suffering a loss in running these Schemes. It was submitted that neither the Tribunal nor the High Court had gone into viability of the Schemes.

12. Mr. P.P. Rao further submitted that the Banking Regulation Act is an Act of 1949. He took the Court through the definition of the term "workman" in the Industrial Disputes Act as well as various other Acts like Beedi and Cigar Workers (Conditions of Employment) Act, Coal Mines Provident Fund and Miscellaneous Provisions Act, Contract Labour (Regulation and Abolition) Act etc. He submitted that under each Act the definition was framed as per the purpose of the Act. He pointed out that depending on the purpose of the Act, either a wide or narrow definition had been given to the term "worker." He pointed out that the proviso to Section 10 of the Banking Regulation Act has been operative since 1949. He submitted that in the Industrial Disputes Act the definition of the term "worker" in Section 2(s) was amended in 1984. He submitted that even in 1984 the legislature did not think it fit to include in this definition a person who was receiving commission. He submitted that this clearly indicates that persons receiving commission were not meant to be and were not workmen within the meaning of the term as laid down in the Industrial Disputes Act.

13. Mr. P.P. Rao further submitted that if the Deposit Collectors are not workmen, then their entitlement has to be as per their contract or as per the provisions of a statute. He

submitted that the Tribunal has no power to change the contract between the parties and/or to impose conditions of service. He submitted that the Tribunal could only have done so, provided it was statutorily permitted or it was so provided in the contract. He submitted that the gratuity which has been awarded by the Tribunal is neither as per the contract between the parties nor as per the provisions of the Payment of Gratuity Act. He submitted that the Deposit Collectors have concealed what they were receiving from the other employment. He submitted that this information should have been called for. He submitted that the entire liability has been foisted on the banks, when, in fact, the other employer should be sharing the burden imposed on the banks.

14. It was submitted on behalf of the appellants that, for all the above reasons, the impugned order and the directions given by the Tribunal should be set aside.

15. On the other hand, Mr. Sharma, on behalf of the respondents submitted that the Deposit Collectors had to regularly visit the small depositors, i.e. small traders, housewives, students, etc. He submitted that they would have to go to these depositors at times which were convenient to those persons or at times when they would be in a position to give the deposit. He submitted that the Deposit Collectors may also have to make more than one visit to small depositors. He submitted that the Deposit Collectors would have to collect deposits from all these persons and then take the collections to the banks and make the deposits after making the relevant entries and filling up the relevant forms. He submitted that the work of Deposit Collectors was manual inasmuch as they had to make the collections by going from place to place and from depositor to depositor and that it was also clerical inasmuch as they had to fill up various forms, accounts registers and passbooks every day. He submitted that over and above this work many of the Deposit Collectors were also made to do other sundry works of a clerical nature in the banks. He submitted that amount received by the Deposit Collectors by way of commission was wage linked to productivity. He submitted that it was incorrect to state that the banks had no control over the Deposit Collectors. He submitted that the banks exercised control over the Deposit Collectors and laid down various stipulations which were to be followed by these Deposit Collectors. He submitted that merely because the nature of the control was different did not mean that there was no control.

16. Mr. Sharma relied upon the definition of the term "wages" in Section 2(rr) of the Industrial Disputes Act. He points out that, under sub-clause (v) of the above definition, "wage" includes commission payable on promotion of sales or business or both. He submitted that the commission which was received by Deposit Collectors was for promotion of the business of the banks, viz. receiving deposits from investors.

17. Mr. Sharma submitted that the proviso to Section 10 clearly laid down that commission could be paid to a person who was not in the regular employment of a bank. He submitted that, therefore, Section 10 of the Banking Regulation Act did not prevent Deposit Collectors from being workmen as defined in the Industrial Disputes Act. In support of his submission he relied upon an authority of the Madras High Court in the case of ***Indian Bank* v. *Presiding Officer, Industrial Tribunal (Central)*** (1990) 1 LLJ 50 (Mad.). In this case, it has been held that Deposit Collectors satisfy the definition of "workman" under the Industrial Disputes Act and that they are "workmen" as defined in the Industrial Disputes Act. It has been held that the banks have control over such Deposit Collectors and that Section 10 of the

Banking Regulation Act did not help the banks in contending that Deposit Collectors were not workmen.

18. Mr. Sharma relied upon the case of ***Silver Jubilee Tailoring House*** **v.** ***Chief Inspector of Shops and Establishments*** [(1974) 3 SCC 498]. In this case the question was whether certain tailors working with the appellant Company were employees of the appellant and were covered by the Andhra Pradesh Shops and Establishments Act and Payment of Wages Act. The questions which arose for consideration were whether the appellants had control over these tailors and whether the fact that these tailors could work for more than one employee meant that there was no relationship of master an servant. This Court held that during the last two decades the emphasis in deciding the question of relationship of employer and employee had changed. It held that while control was an important factor it was wrong to say that in every case it would be a decisive factor. It held that the degree of control and supervision would be different in different types of business and that what was essential was an element of authority over the workers in the performance of the work, so that the employee was subject to the directions of the employer. It also held that working with more than one master. It held that the fact that a servant need not be in the exclusive control of one master. It held that the fact that the workers were not obliged to work whole day was also not very material. It held that all that was necessary was that the workman was principally employed by that employer.

19. Mr. Sharma also relied upon the case of ***Dharangadhra Chemical Works Ltd.*** **v.** ***State of Saurashtra*** [AIR 1957 SC 264]. In this case the appellants were lessees holding a licence for the manufacture of salt on certain lands. The salt was manufactured by labourers known as agarias from rainwater that got mixed with saline matter in the soil. The work was seasonal in nature and commenced in October after the rains and continued till June. Thereafter the agarias left for their own villages and did their own cultivation work. During the season the land were divided into plots and plots were allotted to the agarias. Generally the same plot was allotted to the same agaria every year. After manufacturing of salt the agarias were paid at the rate of 5 annas 6 pies per maund. At the end of each season the accounts were settled and the agarias were paid the balance due to them. During the season agarias worked with the members of their families and were free to engage extra labour on their own, if they so desired. No hours of work were prescribed, no muster roll maintained, nor were working hours controlled by the appellants. There were no rules as regards leave or holidays and the agarias were free to go out of the factory after making arrangements for manufacturing of salt. The question for consideration before this Court was whether the agarias were workmen within the meaning of the Industrial Disputes Act. This Court held that the prima facie test of master and servant relationship between employer and employee was the existence of the right in the employer not merely to direct what work was to be done but also to control the manner in which it was to be done, the nature or extent of such control varying in different industries and being by its nature incapable of being precisely defined. This Court held that the correct approach, therefore, was to consider whether, having regard to the nature of the work, there was due control and supervision of the employer. This Court further held that the question whether the relationship between the parties was one as between an employer and employee was a question of fact and where the Industrial Tribunal came to a

finding, such finding of fact was not open to question in a proceeding under Article 226 of the Constitution, unless it could be shown to be wholly unwarranted by the evidence.

20. Mr. Sharma submitted that in this case the Tribunal had, on consideration of evidence and material before it, arrived at a positive finding that there was control by the banks and that there was a relationship of master and servant. He submitted that such finding of fact was based upon the evidence on record and nothing had been shown that such finding was unwarranted or unsustainable on the basis of evidence on record. He submitted that the High Court was thus right in not interfering with such finding of fact.

21. On the question of the Scheme being unremunerative, Mr. Sharma showed certain pamphlets and circulars recently issued by one of the banks, which is before this Court. He pointed out, from these pamphlets and circulars, that far from the scheme being unremunerative the banks were receiving large amounts as deposits through such Schemes. He pointed out that the banks were wanting to continue with such Schemes.

22. Mr. Sharma submitted that gratuity need not be only under the Payment of Gratuity Act. He submitted that the Tribunal had not said that it was awarding gratuity under the Gratuity Act. He submitted that the Tribunal has powers, dehors the Gratuity Act, to direct payment of gratuity. He submitted that the Tribubal has power and jurisdiction to modify conditions of service and, in this case, it has been found by the Tribunal that there was no fixed pay scales, no bonus, no gratuity, no dearness allowance and, therefore, the Tribunal had given the direction, as set out hereinabove, as and by way of a package. He submitted that earlier commission was being paid at a rate of 3.5 per cent by most of the banks. He pointed out that now, over and above the sum of Rs.7500, the commission has been reduced to 2 per cent. He submitted that to that extent Deposit Collectors were losing, but as this was part of the package as given by the Tribunal it was being accepted by the Deposit Collectors. He submitted that the directions given by the Tribunal were fair and just and absolutely right. He submitted that the order of the High Court was correct and this Court should not interfere.

24. We have considered the rival submissions. In our view, Mr. Sharma was right when he submitted that on the basis of evidence before it the Tribunal has given findings of fact that the Deposit Collectors were workmen within the meaning of Section 2(s) of the Industrial Disputes Act. On the evidence on record it could not be said that this finding was unsustainable. Having been shown the relevant evidence we are also of the opinion that the Tribunal correctly arrived at a conclusion that these Deposit Collectors were workmen.

25. Further, as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by Deposit Collectors is nothing else but wage, which is dependent on the productivity. This commission is paid for promoting the business of the various banks.

26. We also cannot accept the submission that the banks have no control over the Deposit Collectors. Undoubtedly, the Deposit Collectors are free to regulate their own hours of work, but that is because of the nature of the work itself. It would be impossible to fix working hours for such Deposit Collectors because they have to go to various depositors. This would have to be done at the convenience of the depositors and at such times as required by the depositors. If this is so, then no time can be fixed for such work. However, there is control inasmuch as the Deposit Collectors have to bring the collections and deposit the same in the

banks by the very next day. They have then to fill in various forms, accounts registers, and passbooks. They also have to do such other clerical work as the Bank may direct. They are, therefore, accountable to the Bank and under the control of the Bank.

27. We also see no force in the contention that Section 10 of the Banking Regulation Act prevents employment of persons on commission basis. The proviso to Section 10 makes it clear that commission can be paid to persons who are not in regular employment. Undoubtedly, the Deposit Collectors are not regular employees of the Bank. But they, nevertheless, are workers within the meaning of the term as defined in the Industrial Disputes Act. There is clearly a relationship of master and servant between the Deposit Collectors and the Bank concerned.

28. In ***Union of India*** **v.** ***K.V. Baby*** [(1998) 9 SCC 252] it has been held that persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work. It has been held that the mode of selection and qualifications are not comparable with those of the employees, even though the employees may be doing similar works. In the present case, not only the modes of selection and qualifications are comparable, but even the work is not comparable. The work which the Deposit Collectors do is completely different from the work which the regular employees do. There was thus no question of absorption and there is also no question of the Deposit Collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks.

29. We see no substance in the contention that these Schemes are unremunerative. The banks have introduced these Schemes because they want to encourage the common man to make small and regular deposits. As a result of such Schemes, the numbers of deposits have become much larger. We have no doubt that such Schemes are continued because the banks find them remunerative. The banks have large collections through such Schemes.

30. For the reasons set out hereinabove, we see no substance in any of these appeals. All the appeals accordingly stand dismissed.

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Hussainbhai **v.** *Alath Factory Thezhilali Union*

(1978) 4 SCC 257

V.R. KRISHNA IYER, J. -The petitioner before us in this special leave petition is a factory owner manufacturing ropes. A number of workmen were engaged to make ropes from within the factory, but these workmen, according to the petitioner, were hired by contractors who had executed agreements with the petitioner to get such work done. Therefore, the petitioner contended that the workmen were not *his* workmen but the contractors' workmen. The industrial award, made on a reference by the State Government, was attacked on this ground. The learned Single Judge of the High Court, in an elaborate judgment, rightly held that the petitioner was the employer and the members of the respondent-Union were employees under the petitioner. A Division Bench upheld this stand and the petitioner has sought special leave from this Court.

2. It is not in dispute that 29 workmen were denied employment which led to the reference. It is not in dispute that the work done by these workmen was an integral part of the industry concerned; that the raw material was supplied by the Management; that the factory premises belonged to the Management; that the equipment used also belonged to the Management and that the finished product was taken by the Management for its own trade. *The* workmen were broadly under the control of the Management and defective articles were directed to be rectified by the Management. This concatenation of circumstances is conclusive of the question. Nevertheless, this issue is being raised time and again and so we proceed to pass a speaking order. We should have thought that even cases where this impressive array of factors were not present, would have persuaded an industrial court to the conclusion that the economic reality was employer-employee relationship and, therefore, the industrial law was compulsively applicable. Even so, let us look at the issue afresh.

3. Who is an employee, in Labour Law? That is the short, die-hard question raised here but covered by this Court's earlier decisions. Like the High Court, we give short shrift to the contention that the petitioner had entered into agreements with intermediate contractors who had hired the respondent-Union's intermediate workmen and so no direct employer-employee *vinculum juris* existed between the petitioner and the workmen.

4. This argument is impeccable in *laissez faire* economics 'red in tooth and claw' and under the Contract Act rooted in English Common Law. But the human gap of a century yawns between this strict doctrine and industrial jurisprudence. The source and strength of the industrial branch of Third World Jurisprudence is social justice proclaimed in the Preamble to the Constitution. This Court in ***Ganesh Beedi*** case [(1974) 4 SCC 43] has raised on British and American rulings to hold that mere contracts are not decisive and the complex of considerations relevant to the relationship is different. Indian Justice, beyond Atlantic liberalism, has a rule of law which runs to the aid of the rule of life. And life, in conditions of poverty aplenty, is livelihood, and livelihood is work with wages. Raw societal realities, not fine-spun legal niceties, not competitive market economics but complex protective principles, shape the law when the weaker, working class sector needs succour for livelihood through labour. The conceptual confusion between the classical law of contracts and the special

branch of law sensitive to exploitative situations accounts for the submission that the High Court is in error in its holding against the petitioner.

5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex contractu* is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the *maya* of legal appearances.

6. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trappings of detachment from the Management cannot snap the real life-bond. The story may vary but the inference defies ingenuity. The liability cannot be shaken off.

7. Of course, if there is total dissociation in fact between the disowning Management and the aggrieved workmen, the employment is, in substance and in real-life terms, by another. The Management's adventitious connections cannot ripen into real employment.

8. Here, on the facts, the conclusion is correct and leave must be refused.

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A. Sundarambal **v.** *Government of Goa, Daman & Diu*

AIR 1988 SC 1700

E.S. VENKATARAMIAH, J. – The short question which arises for consideration in this case is whether a teacher employed in a school falls within the definition of the expression 'workman' as defined in S. 2(s) of the Industrial Disputes Act, 1947 (the Act').

2. The appellant, Miss A. Sundarambal, was appointed as a teacher in a school conducted by the Society of Franciscan Sisters of Mary at Caranzalem, Goa. Her services were terminated by the Management by a letter dated 25th April, 1975. After she failed in her several efforts in getting the order of termination cancelled, she raised an industrial dispute before the Conciliation Officer under the Act. The conciliation proceedings failed and the Conciliation Officer reported accordingly to the Government of Goa, Daman and Diu by his letter dated 2nd May, 1982. On receipt of the report the Government considered the question whether it could refer the matter for adjudication under S. 10(1)(c) of the Act but on reaching the conclusion that the appellant was not a 'workman' as defined in the Act which alone would have converted a dispute into an industrial dispute as defined in S. 2(k) of the Act, it declined to make a reference. Thereupon the appellant filed a writ petition before the High Court of Bombay, Panaji Bench, Goa for issue of a writ in the nature of mandamus requiring the Government to make a reference under S. 10(1)(c) of the Act to a Labour Court to determine the validity of the termination of her services. That petition was opposed by the respondents. After hearing the parties concerned, the High Court dismissed the writ petition holding that the appellant was not a workman by its judgment dated 5th September, 1983. Aggrieved by the judgment of the High Court the appellant has filed this appeal by special leave.

3. Two questions arise for consideration in this case: (1) whether the school, in which the appellant was working, was an industry, and (2) whether the appellant was a 'workman' employed in that industry. It is, however, not disputed that if the applicant was not a 'workman' no reference under S. 10(1)(c) of the Act could be sought.

4. The first question need not detain us long. In ***University of Delhi*** **v.** ***Ram Nath*** [AIR 1963 SC 1873] a bench consisting of three learned Judges of this Court held that the University of Delhi which was an educational institution and Miranda House, a college affiliated to the said University, also being an educational institution would not come within the definition of the expression 'industry' as defined in S. 2(j) of the Act. Section 2(j) of the Act states that 'industry' means any business, trade, undertaking manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. Gajendragadkar, J. (as he then was) who decided the said case, held that the educational institutions which were predominantly engaged in teaching could not be considered as industries within the meaning of the said expression in S. 2(j) of the Act and, therefore, a driver who was employed by the Miranda House could not be considered as a workman employed in an industry. The above decision came up for consideration in ***Bangalore Water Supply & Sewerage Board*** **v.** ***A. Rajappa*** [AIR 1978 SC 548] before a larger bench of this Court. In that case the decision in ***University of Delhi*** was overruled. Krishna Iyer, J. who delivered the majority judgment observed (at 596) thus:

"(a) Where a complex of activities, some of which qualify for exemption, others not, involves, employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi Case or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the ***Corporation of Nagpur***, will be true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status."

5. The learned Judge, however, observed that while an educational institution was an industry it was possible that some of the employees in that industry might not be workmen. At page 548 with reference to ***University of Delhi*** the learned Judge observed thus:

"The first ground relied on by the Court is based upon the preliminary conclusion that teachers are not 'workmen' by definition. Perhaps, they are not, because teachers do not do manual work or technical work. We are not too sure whether it is proper to disregard, with contempt, manual work and separate it from education, nor are we too sure whether in our technological universe, education has to be excluded. However, that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present. The Court, in the University of Delhi proceeded on that assumption viz. that teachers are not workmen, which we will adopt to test the validity of the argument."

6. Thus it is seen that even though an educational institution has to be treated as an industry in view of the decision in the ***Bangalore Water Supply,*** the question whether teachers in an educational institution can be considered as workmen still remains to be decided.

8. In order to be a workman, a person should be one who satisfies the following conditions: (i) he should be a person employed in an industry for hire or reward; (ii) he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and (iii) he should not be a person falling under any of the four clauses, i.e. (i) to (iv) mentioned in the definition of 'workman' in section 2(s) of the Act. The definition also provides that a workman employed in an industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, an industrial dispute, or whose dismissal, discharge or retrenchment has led to that dispute.

9. We are concerned in this case primarily with the meaning of the words 'skilled or unskilled manual, supervisory, technical or clerical work.' If an employee in an industry is not a person engaged in doing work falling in any of these categories, he would not be a workman at all even though he is employed in an industry. The question for consideration before us is whether a teacher in a school falls under any of the four categories, namely, a person doing any skilled or unskilled manual work, supervisory work, technical work or clerical work. If he does not satisfy any one of the above descriptions he would not be a workman even though he is an employee of an industry as settled by this Court in ***May and Baker (India) Ltd.*** **v.** ***Their Workmen*** [AIR 1967 SC 678]. In that case this Court had to consider the question whether a person employed by a pharmaceutical firm as a representative

(for canvassing orders) whose duties consisted mainly of canvassing orders and any clerical or manual work that he had to do was only incidental to his main work of canvassing could be considered as a workman as defined in the Act. Dealing with the said question, Wanchoo, J. (as he then was) observed thus (at 679-80):

> "A 'workman' was then defined as any person employed in any industry to do any skilled or unskilled manual or clerical work for hire or reward. Therefore, doing manual or clerical work was necessary before a person could be called a workman. This definition came for consideration before industrial tribunals and it was consistently held that the designation of the employee was not of great moment and what was of importance was the nature of his duties. If the nature of the duties is manual or clerical, then the person must be held to be a workman. On the other hand if manual or clerical work is only a small part of the duties of the person concerned and incidental to his main work which is not manual or clerical, then such a person would not be a workman. It has, therefore, to be seen in each case from the nature of the duties whether a person employed is a workman or not, under the definition of that word as it existed before the amendment of 1956. The nature of the duties of Mukerjee is not in dispute in this case and the only question therefore is whether looking to the nature of the duties it can be said that Mukerjee was a workman within the meaning of S. 2(s) as it stood at the relevant time. We find from the nature of the duties assigned to Mukerjee that his main work was that of canvassing and any clerical or manual work that he had to do was incidental to his main work of canvassing and could not take more than a small fraction of the time for which he had to work. In the circumstances the tribunal's conclusion that Mukerjee was a workman is incorrect. The tribunal seems to have been led away by the fact that Mukerjee had no supervisory duties and had to work under the directions of his superior officers. That, however, would not necessarily mean that Mukerjee's duties were mainly manual or clerical. From what the tribunal itself has found it clear that Mukerjee's duties were mainly neither clerical nor manual. Therefore, as Mukerjee was not a workman, his case would not be covered by the Industrial Disputes Act and the tribunal would have no jurisdiction to order his reinstatement. We, therefore, set aside the order of the tribunal directing reinstatement of Mukerjee along with other reliefs.

10. The Court held that the employee Mukerjee involved in that case was not a workman under section 2(s) of the Act because he was not mainly employed to do any skilled or unskilled manual or clerical work for hire or reward, which were the only two classes of employees who qualified for being treated as 'workman' under the definition of the expression 'workman' in the Act, as it stood then. As a result of the above decision, in order to give protection regarding security of employment and other benefits to sales representatives, Parliament passed a separate law entitled the Sales Promotion Employees (Conditions of Service) Act, 1976. It is no doubt true that after the events leading to the above decision took place section 2(s) of the Act was amended by including persons doing technical work as well as supervisory work. The question for consideration is whether even after the inclusion of the above two classes of employees in the definition of the expression

'workman' in the Act a teacher in a school can be called a workman. We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as 'workman' within the meaning of section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as 'workmen' as defined under the Act. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in section 2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words 'to do any skilled or unskilled manual, supervisory, technical or clerical work' meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision in ***May and Baker (India) Ltd.*** precludes us from taking such a view. We, therefore, hold that the High Court was right in holding that the appellant was not a 'workman' though the school was an industry in view of the definition of 'workman' as it now stands.

11. We may at this stage observe that teachers as a class cannot be denied the benefits of social justice. We are aware of the several methods adopted by unscrupulous managements to exploit them by imposing on them unjust conditions of service. In order to do justice to them it is necessary to provide appropriate machinery so that teachers may secure what is rightly due to them. In a number of States in India laws have been passed for enquiring into the validity of illegal and unjust terminations of services of teachers by providing for appointment of judicial tribunals to decide such cases. We are told that in the State of Goa there is no such Act in force. If it is so, it is time that the State of Goa takes necessary steps to bring into force an appropriate legislation providing for adjudication of disputes between teachers and the Managements of the educational institutions. We hope that this lacuna in the legislative area will be filled up soon.

12. This appeal, however, fails and it is dismissed. Before we conclude we record the statement made on our suggestion by the learned counsel for the Management, Shri G.B. Pai that the Management would give a sum of Rs.40,000/- to the appellant in full and final settlement of all her claims. The learned counsel for the appellant has agreed to receive Rs. 40,000/- accordingly. We direct the Management to pay the above sum of Rs.40,000/- to the appellant in six instalments.

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H.R. Adyanthaya **v.** *Sandoz (India) Ltd.*

(1994) 5 SCC 737

P.B. SAWANT, J. – The question that falls for consideration in these matters is whether the 'medical representatives' as they are commonly known, are workmen according to the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947 (the 'ID Act'). The definition under this section has undergone changes since its first enactment. It is necessary to keep in mind the said changes since the decisions of this Court delivered on the point from time to time are based on the definition, as it stood at the relevant time. The definition, as it stood originally when the ID Act came into force w.e.f. 1.4.1947, read as follows:

> "(*s*) 'workman' means any person employed (including an apprentice) in any industry to do any skilled or unskilled, manual or clerical work for hire or reward and includes, for the purposes of any proceeding under this Act in relation to an industrial dispute, a workman discharged during that dispute, but does not include any person employed in the naval, military, or air services of the Crown."

It was amended by Amending Act 36 of 1956 which came into force from 29.8.1956 to read as follows:

> "(*s*) 'workman' means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the term of employment be expressed in 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

2. The change brought about by this Amendment was that the persons employed to do 'supervisory' and 'technical' work were also included in the definition for the first time by this amendment, although those who were employed in a supervisory capacity were so included in the definition provided their monthly wage did not exceed Rs. 500. The definition of 'workman' was further amended by Amendment 46 of 1982 which was brought into force w.e.f. 21.8.1984. It read as –

> "(*s*) 'workman' means any person (including an apprentice) employed in any industry to do any manual, 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 …

3. The first change brought about by this amendment was that whereas earlier only those who were doing unskilled or skilled manual work were included in the said definition, now those who did any unskilled or skilled work, whether manual or not, came to be included in

it. The second and the most important change that was brought about was that those persons who were employed to do 'operational' work were also brought within the fold of the said definition.

4. We are not referring to the other changes which the definition of 'workman' underwent, after its enactment in 1947 since they are not relevant for our purpose.

5. What is further necessary to remember is that the Amending Act 46 of 1982 simultaneously brought about a change in the definition of 'wages' under Section 2(rr) of the ID Act and for the first time included the following in the said definition:

"(*iv*) any commission payable on the promotion of sales or business or both."

6. It is also instructive to point out, in this connection that along with the change in the definition of 'wages,' the definition of 'industry' under Section 2(*j*) has also been amended. The relevant part of the amended definition reads as follows:

7. It will be seen that by the amended definition of 'industry', an activity relating to the promotion of sales or business or both, carried on by any establishment is for the first time sought to be brought within the said definition. However, the amended definition of 'industry' has not till date come into force.

8. In the light of the amended definitions of 'workman' and 'wages' and that of 'industry' which has not yet become operative, we may now refer to the decisions of this Court on the subject.

9. A three-Judge Bench of this court in ***May & Baker (India) Ltd.*** **v.** ***Workmen*** [AIR 1967 SC 678] had to deal directly with the question as to whether the medical representative of the company, who was discharged from service, was a workman under the ID Act and the order of reinstatement passed by the Industrial Tribunal was, therefore, valid. The Court referred to the undisputed nature of the duties of the employee and found that his main work was that of canvassing sales. Any clerical or manual work that he had to do was incidental to the said main work, and could not take more than a small fraction of the time for which he had to work. In the circumstances, the Court held that the Tribunal's conclusion that the employee was a workman under the ID Act was incorrect. The Court also observed that the Tribunal in that case seemed to have been led away by the fact that the employee had no supervisory duties and had to work under the direction of his superior officers. The Court held that this would not necessarily mean that the employee's duties were mainly manual or clerical. The Court held that from what the Tribunal had found, it was clear that the employee's duties were mainly neither clerical nor manual and, therefore, he was not a workman. Hence the Court set aside the Tribunal's direction for reinstating the employee.

10. It is thus obvious from the decision that the contention on behalf of the workman before the Industrial Tribunal as well as before this Court was that the employee was doing either manual or clerical work, and that not only he had no supervisory duties but he was doing his work under the direction of his superiors and, therefore, he was a workman within the meaning of the definition of workman as it stood then. The dispute in question had arisen prior to 6.1.1956. The definition of 'workman' at the relevant time included only those persons who were employed to do any skilled or unskilled manual or clerical work. Hence

the relevant contention on behalf of the workman was negatived by this Court. An inference from this decision is also possible, viz., that if the employee's work was mainly manual or clerical, he would have, even as the definition stood then, been covered by it.

11. The next decision is also of the same three-judge Bench in ***Western India Match Co. Ltd.*** **v.** ***Workmen*** **[**AIR 1964 SC 472]. The dispute there was whether the workmen employed by the sales-office of the company were entitled to production bonus as were those employed in the factory and the factory-office. The incidental question which arose in this case was whether the sales-office was entirely independent of the factory or was a department of the one and the same unit of production, and whether inspectors, salesmen, and retail salesmen of the sales-office were workmen within the meaning of the U.P. Industrial Disputes Act. The 'workman' was defined under that Act to mean "any person …to do any manual, supervisory, technical or clerical work for hire or reward…" which definition was the same as under the Central Act, viz. the ID Act. This dispute was referred by the State Government for adjudication to the Industrial Tribunal on 18.8.1961. The Tribunal had accepted the evidence of the workmen that the writing work of the inspectors, salesmen and retail salesmen took 75 per cent of the time. This Court accepted the said finding. On the question whether the sales-office and the factory and factory-office formed one and the same unit of the industrial establishment, the Court held that all those growing or making articles as well as those transporting them and also those ultimately completing the process of bringing them to the ultimate consumer, were engaged in the activity of producing wealth. It would, therefore, be unreasonable to say that those who made the matches were 'producing' and those who 'sold' them were not. The functional integrity, interdependence or community of financial control and management; community of manpower and of its control, recruitment and discipline; the manner in which the employer has organised the different activities; whether he has treated them as independent of one another or as interconnected and interdependent, are some of the tests to find out whether the two units are parts of one and the same establishment. The Court further held that the difference in the rules and practice in connection with their recruitment, control and discipline, in the standing orders applicable to them, and in the maintenance of their muster-rolls made no difference to the situation. So also the fact that the sales-office was paying rent to the factory for the area occupied by it. It would thus appear that this decision mainly turned on the nature of the work done by the said salesmen, viz. 75 per cent clerical work. We have referred to the other aspect, viz., the integrality of the sales-office and the other parts of the establishment to emphasise that sales is as much an essential part of an undertaking which is established for the manufacture and sale of a product. It must be mentioned that there is no reference in this decision to the earlier decision of the same Bench in ***May & Baker*** case.

12. In ***Burmah Shell Oil Storage & Distribution Co. of India Ltd.*** **v.** ***Burmah Shell Management Staff Assn.*** [AIR 1971 SC 922], the dispute, among others, was whether the Sales Engineering Representatives and District Sales Representatives employed in the company were workmen within the meaning of the ID Act. The dispute had arisen prior to 28.10.1967. The argument on behalf of the workmen was that the definition of the 'workmen' (which at the relevant time also included persons doing supervisory and technical work) was all comprehensive and contemplated that all persons employed in an industry must necessarily

fall in one or the other of the four classes mentioned in the main body of the definition, viz., those doing skilled or unskilled manual work, supervisory work, technical work or clerical work, and consequently the court should proceed on the assumption that every person is a workman unless he fell under one of the four exceptions to the definition. The Court rejected this contention. The Court referred to its earlier decision in ***May & Baker*** case and pointed out that the Court had held that since duties of the employee there were not mainly manual or clerical the employee was not a workman. The Court also pointed out that although that decision was based on the definition as it stood then, when the words 'supervisory' and 'technical' did not occur there, if every employee of an industry was to be a workman except those mentioned in the four exceptions, the four classifications, viz., manual, supervisory, technical and clerical need not have been mentioned in the definition, and the workman could have been defined so as to include every person employed in an industry except where he was covered by one of the exceptions. The specification of the four types of work, according to the Court, was obviously intended to lay down that an employee was to be a workman only if he was employed to do work of one of those types. There may be employees who do not do any such work and hence would be out of the scope of the definition. The Court then gave an example of such workman who would be outside the definition of workman even if he did not fall in any of the exceptions. Coincidentally, the example given was that of a person employed in canvassing sales of an industry. According to the Court, he may not be required to do any paper work nor may he be required to have any technical knowledge. He may not be supervising the work of any other employees, nor would he be doing any skilled or unskilled manual work. Even if he is an employee of the industry, he would not be a workman because the work for which he is employed is not covered by the four types mentioned in the definition and not because he could be taken out of the definition being under one of the exceptions. The Court then referred to a case where employees are employed to do work of more than one of the types mentioned in the definition, and pointed out that in such cases the principle was well-settled that a person must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing several types of work. Referring in this connection to the ***May & Baker*** case, the Court pointed out that in that case, it was noticed that the employee's duties were mainly neither clerical nor manual although his duties did involve some clerical and manual work and hence he was held not to be a workman. The Court then referred to the nature of the duties of Sales Engineering Representatives and the District Sales Representatives with whom, among others, the Court was concerned there. With regard to the Sales Engineering Representatives, the Court approved of the finding of the Tribunal that he was not employed on a supervisory work, but found fault with the Tribunal for not proceeding further to examine whether he was employed on any other work of such a type that he could be brought within the definition of workman. The Court then itself examined the said question. Since there was no suggestion at all that he was employed on clerical or manual work, and all that was canvassed was that he was doing technical work, the Court found that the amount of technical work that he did was of ancilliary nature to his chief duty of promoting sales and giving advice. The mere fact that he was required to have technical knowledge, for such a purpose, did not make his work technical. According to the Court the work of advising and removing complaints so as to promote sales remains outside the scope of technical work. Consequently, the Tribunal's

finding that the Sales Engineering Representative was a workman was set aside. Referring to the District Sales Representatives, the Court held that they were not doing clerical work, and that they were principally employed for the purpose of promoting sales of the company. Their main work was canvassing and obtaining orders. In that connection, of course, they had to carry on some correspondence, but that correspondence was incidental to the main work of pushing sales of the company. In connection with promotion of sales, they had to make recommendations for selection of agents and dealers; extension or curtailment of credit facilities to agents, dealers and customers; investments of capital and revenue in the shape of facilities at agent's premises or retail outlets; and selection of suitable sites for retail outlets to maximise sales and negotiations for terms of new sites. On these facts, the Court held that the work that they were doing was neither manual nor clerical nor technical nor supervisory, and further added that the work of canvassing and promoting sales could not be included in any of the said four classifications and the decision given by the Tribunal that they were not workmen was valid.

13. In ***S.K. Verma* v. *Mahesh Chandra*** [(1983) 4 SCC 214] the dispute was whether Development Officers of the Life Insurance Corporation of India (LIC) were workmen. The dispute arose on account of the dismissal of the appellant-Development Officer w.e.f. 8.2.1969. The court noticed that the change in the definition of workman brought about by the Amending Act 36 of 1956 which, as stated above, added to the originally enacted definition, two more categories of employees, viz., those doing 'supervisory' and 'technical' work. The three-Judge Bench of this Court did not refer to the earlier decisions in ***May & Baker***, ***WIMCO*** and ***Burmah Shell*** cases. The Bench only referred to the decision of this Court in ***Workmen* v. *Indian Standards Institution*** [(1975) 2 SCC 847] where while considering whether ISI was an 'industry' or not, it was held that since the ID Act was a legislation intended to bring about peace and harmony between management and labour in an 'industry,' the test must be so applied as to give the widest possible connotation to the term 'industry' and, therefore, a broad and liberal and not a rigid and doctrinaire approach should be adopted to determine whether a particular concern was an industry or not. The Court, therefore, held that to decide the question whether the Development Officers in the LIC were workmen or not, it should adopt pragmatic and not a pedantic approach and consider the broad question as to on which side of the line the workman fell, viz., labour or management, and then to consider whether there were any good reasons for moving them on from one side to the other. The Court then noticed that the LIC Staff Regulations classified the staff into four categories, viz., (i) Officers, (ii) Development Officers, (iii) Supervisors and Clerical Staff, and (iv) Subordinate Staff. The Court pointed out that Development Officers were classified separately both from Officers on the one hand and Supervisors and Clerical Staff on the other and that they as well as Class III and Class IV staff other than Superintendents were placed on par inasmuch as their appointing and disciplinary authority was the Divisional Manager whereas that of Officers was Zonal Manager. The Court also referred to their scales of pay and pointed out that the appellation ''Development Officer'' was no more than a glorified designation. The Court then referred to the nature of duties of the Development Officers and pointed out that a Development Officer was to be a whole-time employee and that his operations were to be restricted to a defined area and that he was liable to be transferred. He had no authority whatsoever to bind the Company in any way. His principal

duty appeared to be to organise and develop the business of the Corporation in the area allotted to him, and for that purpose, to recruit active and reliable agents, to train them, to canvass new business and to render post-sale services to policyholders. He was expected to assist and inspire the agents. Even so, he had not the authority either to appoint them or to take disciplinary action against them. He did not even supervise the work of the agents though he was required to train them and assist them. He was to be a friend, philosopher and guide of the agents working within his jurisdiction and no more. He was expected to "stimulate and excite" the agents to work while exercising no administrative control over them. The agents were not his subordinates. He had no subordinate staff working under him. The Court, therefore, held that it was clear that the Development Officer could not by any stretch of imagination be said to be engaged in any administrative or managerial work and, therefore, he was a workman within the meaning of the ID Act. Accordingly, the order of the Industrial Tribunal and the judgment of the High Court holding that he was not a workman were set aside. As has been pointed out above, this decision did not refer to the earlier three decisions in ***May & Baker, WIMCO*** and ***Burmah Shell*** cases, and obviously proceeded on the basis that if an employee did not come within the four exceptions to the definition, he should be held to be a workman. This basis was in terms considered and rejected in ***Burmah Shell*** case by a Coordinate Bench of three Judges. Further no finding is given by the Court whether the Development Officer was doing clerical or technical work. He was admittedly not doing manual work. We may have, therefore, to treat this decision as *per incuriam*.

14. ***Ved Prakash Gupta* v. *Delton Cable India (P) Ltd.*** [(1984) 2 SCC 569] was decided by the same three-Judge Bench which decided the ***S.K. Verma*** case [(1983) 4 SCC 214]. The question there was whether the Security Inspector at the gate of the factory was a workman within the meaning of the ID Act. The dispute had arisen on account of his dismissal from service on 13.9.1979. The Court referred to the nature of duties performed by the employee and found that a substantial part of the work of the employee consisted of looking after the security of the factory and its property by deputing the watchmen working under him to work at the factory gate or sending them to the watch-tower or around the factory or to accompany visitors to the factory and making entries in the visitors register and also making entries regarding the material entering in and going out of the premises of the factory. No written list of duties was given to the employee. The appellant was also doing other items of work such as signing identity cards of workmen, issuing some small items of stores like torch-cells to his subordinate watchmen and filling up application forms of other workmen and counter-signing them or recommending advances and loans or for promotion of his subordinates. He could not appoint or dismiss any workmen or order any enquiry against any workmen. He was working under the Security Officer and various other heads of departments of the management. He was also performing the duties of chowkidar when one of the chowkidars left the place temporarily for taking tea etc. He was also accompanying Accounts Branch people as a guard whenever they carried money. On these facts, the Court held that the substantial duty of the employee was that of a security inspector at the gate of the factory and it was neither managerial nor supervisory in nature in the sense in which those terms were understood in industrial law. The Court, therefore, held that he was a workman under the ID Act. This decision also did not refer to the earlier decisions in ***May & Baker***, ***WIMCO*** **a**nd ***Burmah***

Shell cases and instead followed the ratio of the earlier decision in ***S.K. Verma*** case. What is further, the decision turned on the facts of the case.

15. In ***Arkal Govind Raj Rao*** **v.** ***Ciba Geigy of India Ltd.*** [(1995) 3 SCC 371], the employee was first appointed as a Stenographer-cum Accountant and later as Assistant. His services were terminated on 10.10.1982 which formed the subject-matter of an industrial dispute. One of the preliminary points raised on behalf of the employer before the Labour Court was whether he was a workman within the meaning of the ID Act. The Court accepted the finding of the Labour Court that primarily the duties of the employee were of a clerical nature and held that he was a workman. The Court also referred to the earlier decision in ***S.K. Verma*** and ***Delton Cable*** [(1984) 2 SCC 569] cases.

16. ***A. Sundarambal*** **v.** ***Government of Goa, Daman & Diu*** [(1988) 4 SCC 42] was a case of a teacher in a school conducted by a private society. Her services were terminated on 25.4.1975 which gave rise to the industrial dispute. Two questions raised were whether the school was an industry and whether the teacher was a workman under the ID Act. We are not concerned with the first question in this case. While answering the second question, the Court considered the meaning of the words "skilled or unskilled, manual, supervisory, technical or clerical work" in the definition of workman under the ID Act and held that if an employee is not a person engaged in doing work falling in any of the said categories, he would not be a workman at all even though he is employed in an industry. For this purpose, the Court relied on ***May & Baker*** case, and further held that teachers employed by educational institutions whether they are imparting primary, secondary, graduate or postgraduate education, cannot be called workmen. Imparting of education which is the main function of a teacher cannot be considered as unskilled or skilled, manual or supervisory or technical or clerical work. The clerical work a teacher does is only incidental to his principal work of teaching. The Court did not accept the suggestion that having regard to the object of the ID Act, all employees in an industry except those falling under the four exceptions to the definition should be treated as workmen. The Court held that to accept the said argument would render the words "to do any skilled or unskilled manual, supervisory, technical or clerical work" meaningless. The Court held that a liberal construction as suggested would have been possible only in the absence of the said words. The Court, therefore, upheld the decision of the High Court that the appellant was not a workman though the school was an industry. It is thus obvious from this decision given as late as in 1988 that the Court reiterated the earlier decision in ***May & Baker*** case and instead that before a person could qualify to be a workman within the meaning of the ID Act, he had to satisfy that he did work of any of the four types mentioned in the main body of the definition and that it was not enough that he did not fall within any of the four exceptions in the definition.

17. A still later decision of a two-Judge Bench of this court in ***T.P. Srivastava*** **v.** ***National Tobacco Co. of India Ltd.*** [(1992) 1 SCC 281] by referring to the decision in ***Burmah Shell*** case has also reiterated the law laid down in ***May & Baker*** case. There the employee concerned was a Section Salesman of the company whose services were terminated w.e.f. 12.7.1973. The Court held that in order to come within the definition of workman under the ID Act the employee had to be employed to do the work of one of the types referred to in the main body of the definition. The Court also referred to the Sales Promotion Employees

(Conditions of Service) Act, 1976 and pointed out that the provisions of that Act were not made applicable to the employees of the company. The Court further pointed out that the object of the said Act would show that persons employed for sales promotion normally would not come within the definition of workman under the ID Act. The Court accordingly upheld the decision of the Labour Court that the employee was not a workman within the meaning of the ID Act.

18. The legal position that arises from the statutory provisions and from the aforesaid survey of the decisions may now be summarised as follows.

19. Till 29.8.1956 the definition of workman under the ID Act was confined to skilled and unskilled manual or clerical work and did not include the categories of persons who were employed to do 'supervisory' and 'technical' work. The said categories came to be included in the definition w.e.f. 29.8.1956 by virtue of the Amending Act 36 of 1956. It is, further, for the first time that by virtue of the Amending Act 46 of 1982, the categories of workmen employed to do 'operational' work came to be included in the definition. What is more, it is by virtue of this amendment that for the first time those doing non-manual unskilled and skilled work also came to be included in the definition with the result that the persons doing skilled and unskilled work whether manual or otherwise, qualified to become workmen under the ID Act.

20. The decision in ***May & Baker*** case was delivered when the definition did not include either 'technical' or 'supervisory' or 'operational' categories of workmen. That is why the contention on behalf of the workmen had to be based on the manual and clerical nature of the work done by the sales representatives in that case. The Court had also, therefore, to decide the category of the sales representatives with reference to whether the work done by him was of a clerical or manual nature. The Court's finding was that the canvassing for sale was neither clerical nor manual, and the clerical work done by him formed a small fraction of his work. Hence, the sales representative was not a workman.

21. In ***WIMCO*** case, the dispute had arisen on 18.8.1961 under the U.P. Industrial Disputes Act and at the relevant time the definition of the workman in that Act was the same as under the Central Act, i.e. the ID Act which had by virtue of the Amending Act 36 of 1956 added to the categories of workmen, those doing supervisory and technical work. However, the argument advanced before the Court was not on the basis of the supervisory or technical nature of the work done by the employees concerned, viz., inspectors, salesmen and retail salesmen. The argument instead, both before the Industrial Tribunal and this Court was based on the clerical work put in by them, which were found to be 75 per cent of their work. This Court confirmed the finding of the Tribunal that the employees concerned were workmen because 75 per cent of their time was devoted to the writing work. The incidental question was whether the sales-office and the factory and the factory-office formed part of one and the same industrial establishment or were independent of each other. The Court observed that it would be unreasonable to say that those who were producing matches were workmen and those who sold them were not. In other words, the Court did not hold that the work of selling matches was as much as operational part of the industrial establishment as was that of manufacturing.

22. In ***Burmah Shell*** case, the workmen involved were Sales Engineering Representatives and District Sales Representatives. The dispute had arisen on 28.10.1967 when the categories of workmen doing supervisory and technical work stood included in the definition of workman. The Court found that the work done by the Sales Engineering Representatives as well as District Sales Representatives was neither clerical nor supervisory nor technical. An effort was made on behalf of the workmen to contend that the work of Sales Engineering Representatives was technical. The Court repelled that contention by pointing out that the amount of technical work that they did was ancillary to the chief work of promoting sales and the mere fact that they possessed technical knowledge for such purpose, did not make their work technical. The Court also found that advising and removing complaints so as to promote sales remained outside the scope of the technical work. As regards the District Sales Representatives, the argument was that their work was mainly of clerical nature which was negatived by the Court by pointing out that the clerical work involved was incidental to their main work of promoting sales. What is necessary further to remember in this case is that the Court relied upon its earlier decision in ***May & Baker*** and pointed out that in order to qualify to be a workman under the ID Act, a person concerned had to satisfy that he fell in any of the four categories of manual, clerical, supervisory or technical workman.

24. We thus have three three-Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz., manual, clerical, supervisory or technical and two two-Judge Bench decisions which have by referring to one or the other of the said three decisions have reiterated the said law. As against this, we have three three-Judge Bench decisions which have without reference to the decisions in ***May & Baker***, ***WIMCO*** and ***Burmah Shell*** cases have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation.

25. What is further necessary to remember is that in none of the aforesaid decisions which we have discussed above, the word 'operational' or the words 'skilled' and 'unskilled' independently of 'manual' fell for consideration as the amendment under which they were introduced came into operation for the first time w.e.f. 21.8.1984 and the dispute involved in aforesaid decisions were of the prior dates.

26. We may now refer to the relevant provisions of the Sales Promotion Employees (Conditions of Service) Act, 1976 (the 'SPE Act') which came into force w.e.f. 6.3.1976 and applied forthwith to every establishment engaged in pharmaceutical industry by virtue of its Section 1(4). The definition of the Sales Promotion Employee in clause (d) of Section 2 of the SPE Act as it was originally enacted reads as follows:

"(d) 'sales promotion employee' means any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both, and –

(i) who draws wages (being wages, not including any commission) not exceeding seven hundred and fifty rupees per mensem; or

(ii) who had drawn wages (being wages, including commission) or commission only, in either case, not exceeding nine thousand rupees in the aggregate in the twelve months immediately preceding the months in which this Act applies to such establishment and continues to draw such wages or commission in the aggregate, not exceeding the amount aforesaid in a year.

but does not include any such person who is employed or engaged mainly in a management or administrative capacity."

27. It will be noticed that under the SPE Act, the sales promotion employee was firstly, one who was engaged to do any work relating to promotion of sales or business or both, and secondly, only such of them who drew wages not exceeding Rs. 750 per mensem (excluding commission) or those who had drawn wages (including commission) or commission not exceeding Rs. 9000 per annum whether they were doing supervisory work or not were included in the said definition. The only nature/type of work which was excluded from the said definition was that which was mainly in managerial or administrative capacity.

28. The SPE Act was amended by the Amending Act 48 of 1986 which came into force w.e.f. 6.5.1987. By the said amendment, among others, the definition of sales promotion employee was expanded so as to include all sales promotion employees without a ceiling on their wages except those employed or engaged in a supervisory capacity drawing wages exceeding Rs. 1600 per mensem and those employed or engaged mainly in managerial or administrative capacity.

29. Section 6 of that Act made the Workmen Compensation Act, 1923, Industrial Disputes Act, 1947, (the ID Act), Minimum Wages Act, 1948, Maternity Benefit Act, 1961, Payment of Bonus Act, 1965 and Payment of Gratuity Act, 1972 applicable forthwith to the medical representatives. Sub-section (2) of the said section while making the provisions of the ID Act, as in force for the time being, applicable to the medical representatives stated as follows:

"(2) The provisions of the Industrial Disputes Act, 1947 (14 of 1947), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of the Act and for the purposes of any proceeding under that Act in relation to an industrial dispute, a sales promotion employee shall be deemed to include a sales promotion employee who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment had led to that dispute."

In other words, on and from 6.3.1976 the provisions of the ID Act became applicable to the medical representatives depending upon their wages up to 6.5.1987 and without the limitation on their wages thereafter and upon the capacity in which they were employed or engaged.

30. It appears that the SPE Act was brought on the statute book, as the Statement of Objects and Reasons accompanying the Bill shows, as a result of this Court's judgment in

May & Baker case. The Committee of Petitions (Rajya Sabha) in its 13th Report submitted on 14.3.1972 had come to the conclusion that the ends of social justice would be met only by suitably amending the definition of the term 'workman' in the ID Act in the manner that the medical representatives were also covered by the definition of workman under the ID Act. The Committee also felt that other workers engaged in sales promotion should similarly be considered as workmen. The legislature, however, considered it more appropriate to have a separate legislation for governing the conditions of services of the sale promotion employees instead of amending the ID Act, and hence the SPE Act.

31. It also appears that Parliament has amended the definition of 'industry' by the Amending Act 46 of 1982 to include, in the definition of industry in Section 2(j) of the ID Act, among others, any activity relating to the promotion of sales or business, or both carried on by any establishment. However, that amendment has not yet come into force. But the amendment made by the very same Amending Act of 1982 to the definition of 'workman' in Section 2(s) to include those employed to do 'operational work,' and to the definition of 'wages' in Section 2(rr) to include "any commission payable on the promotion of sales or business or both" has come into force w.e.f. 21.8.1984.

33. It was contended by Shri Sharma, appearing for the workmen that the definition of workmen under the ID Act includes all employees except those covered by the four exceptions to the said definition. His second contention was that in any case, the medical representatives perform duties of skilled and technical nature and, therefore, they are workmen within the meaning of the said definition. We are afraid that both these contentions are untenable in the light of the position of law discussed above. The first contention was expressly negatived by two three-Judge Benches in ***May & Baker*** and ***Burmah Shell*** cases as has been pointed out in detail above. As regards the second contention, it really consists of two sub-contentions, viz., that the medical representatives are engaged in 'skilled' and 'technical' work. As regards the word 'skilled,' we are of the view that the connotation of the said word in the context in which it is used, will not include the work of a sales promotion employee such as the medical representative in the present case. That word has to be construed *ejusdem generis* and thus construed, would mean skilled work whether manual or non-manual, which is of a genre of the other type of work mentioned in the definition. The work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition. Hence the contention that the medical representatives were employed to do skilled work within the meaning of the said definition, has to be rejected. As regards the 'technical' nature of their work, it has been expressly rejected by this Court in ***Burmah Shell*** case. Hence the contention has also to be rejected.

34. Shri Napathe, the learned counsel appearing for the petitioner in WP No. 5259 of 1980 contended that inasmuch as the SPE Act, as it was originally enacted, made a distinction between sales promotion employees drawing wages not exceeding Rs. 750 per mensem (excluding commission) or Rs. 9000 per annum (including commission) and those drawing wages above the said amounts, included not only the first category of employees in the said definition, it was discriminatory as against those who fell in the second category and was violative of Article 14 of the Constitution. According to him, the classification made had no

rational nexus with the object sought to be achieved by the enactment. We are afraid that this argument is not tenable. The service conditions and their protection are not fundamental rights. They are creatures either of statute or of the contract of employment. What service conditions would be available to particular employees, whether they are liable to be varied, and to what extent are matters governed either by the statute or the terms of the contract. The legislature cannot be mandated to prescribe and secure particular service conditions to the employees or to a particular set of employees. The service conditions and the extent of their protection as well as the set of employees in respect of which they may be prescribed and protected, are all matters to be left to the legislature. Hence when a legislation extends protective umbrella to the employees of a particular class, it cannot be faulted so long as the classification made is intelligible and has a rational nexus with the object sought to be achieved. In the present case, the classification made between two categories of the sales promotion employees, viz., those drawing wages up to a particular limit and those drawing wages above it, is fairly intelligible. The object of the legislation further appears to be to give protection of the service conditions to the weaker sections of the employees belonging to the said category. The legislature at that particular time thought that it was not either necessary to extend the said protection to all the employees belonging to the said category irrespective of their income or that at that stage the circumstances including the conditions and the nature of the employment and the sales business or operation did not warrant protection to the economically stronger section of the said employees, and that economically weaker among them alone needed the protection. Hence it cannot be said that the classification made of the said employees on the basis of their income had no rational nexus with the object sought to be achieved, viz., the protection of the weaker section of the said employees. The extension of the protective umbrella could not as a matter of right, therefore, be demanded by those who draw more wages. Even in the definition of the workman under the ID Act as well as under the very SPE Act, the classification of those employed to do supervisory work has been made on the basis of their monthly income although the work done by the two sections of the workmen is the same, viz., supervisory and those drawing wages above the particular limit have been excluded from the said definition. According to us, it is permissible to classify workmen on the basis of their income although the work that they do is of the same nature. The protective umbrella need not cover all the workmen doing the particular type of work. It can extend to them in stages. At what stage which of the said section of the employees should come under the said umbrella is a matter which should be left to the legislature which is the best judge of the matter. We, therefore, do not see any merit in the contention.

37. We have already pointed out as to why the word 'skilled' would not include the kind of work done by the sale promotion employees. For the very same reason, the word 'operational' would also not include the said work. To hold that everyone who is connected with any operation of manufacturing or sales is a workmen would render the categorisation of the different types of work mentioned in the main part of the definition meaningless and redundant. The interpretation suggested would in effect mean that all employees of the establishment other than those expressly excepted in the definition are workmen within the meaning of the said definition. The interpretation was specifically rejected by this Court in ***May & Baker***, ***WIMCO***, ***Burmah Shell*** and ***A. Sundarambal*** cases. Although such an interpretation was given in ***S.K. Verma***, ***Delton Cables*** and ***Ciba Geigy*** cases the legislature

impliedly did not accept the said interpretation as is evident from the fact that instead of amending the definition of 'workman' on the lines interpreted in the said latter cases, the legislature added three specific categories, viz., unskilled, skilled and operational. The 'unskilled,' 'skilled' were divorced from 'manual' and were made independent categories. If the interpretation suggested was accepted by the legislature, nothing would have been easier than to amend the definition of 'workman' by stating that any person employed in connection with any operation of the establishment other than those specifically expected is a workman. It must further be recommended that the independent categories of 'unskilled', 'skilled' and 'operational' were added to the main part of the definition after the SPE Act was placed on the statute book.

* * * * *

G.B. Pant University of Agriculture & Technology v. *State of U.P.*

(2000) 7 SCC 109

U.C. BANERJEE, J. – Redressal of grievances of the cafeteria workers in Gobind Ballabh Pant University of Agriculture and Technology, Nainital by reason of an award of the Presiding Officer, Labour Court, Haldwani, Uttar Pradesh and subsequent confirmation thereof by the High Court prompted the University to move this Court in appeal against the same.

2. G.B. Pant University of Agriculture and Technology established under the U.P. Agricultural University Act, 1958 happens to be a residential university having about 14 hostels to provide accommodation to the students with a cafeteria to provide food services to the residents of the hostels and others. There are about 170 employees working in these cafeterias and these are the employees who claim regularisation of the service as regular employees of the University which, however, stands negated by the University authority. The records depict that by reason of refusal to accept such a claim, the disputes were referred under two separate references in terms of Section 4(k) of the Uttar Pradesh Industrial Disputes Act in November 1991 which were registered as References Nos. 141 and 142 of 1991. The Labour Court upon acceptance of the claim of the employees in no certain terms found the entitlement of the employees of the cafeteria and declared the latter to be the regular employees of the University from the date of the award and held entitled to receive the same salary and other benefits as the other regular employees of the University. The University, however, being aggrieved by the award moved two writ petitions by way of challenges to the two awards under Article 226 of the Constitution. The High Court also on a detailed scrutiny of the Regulations and other materials on record dismissed the writ petitions with an observation that the impugned awards of the Labour Court are perfectly justified in the facts and circumstances of the case and do not suffer from any error of law. It is this order which is under challenge in this appeal.

3. There cannot possibly be any doubt that the socialistic concept of society as laid down in Parts III and IV of the Constitution ought to be implemented in the true spirit of the Constitution. Decisions are there of this Court galore wherein this Court on more occasion than one stated that democratic socialism aims to end poverty, disease and inequality of opportunity.

4. Mr. Trivedi, the learned Additional Solicitor General appearing in support of the appeals rather strongly contended that the High Court has totally misconstrued the Regulations framed under the statute pertaining to hostel and cafeteria (Hostel and Cafeteria Regulations under the U.P. Agricultural University Act, 1958) and rather after a longish narration of the Regulations contended that it is not the University which has any control over the employees of the cafeteria but the Food Committee which has specific role in the matter of management and control of the cafeteria and since there exists no evidence whatsoever on record that the employees working in the cafeteria were appointed by the University in accordance with the provisions contained in the Act or the statute framed thereunder, question of there being any master-servant relationship would not arise. It is in this context also it has been contended by Mr. Additional Solicitor that there is no budgetary allocation provided in

the University budget to meet the expenses on account of the salaries of the cafeteria employees and as such, question of the cafeteria employees being termed to be the employees of the University would not arise. Strong reliance was placed on the decision of this Court in ***All India Railway Institute Employees' Association* v. *Union of India***, (1990) 2 SCC 542, wherein this court observed: (SCC p. 549, paras 12-13)

> "12. By their very nature further the services of the institutes/clubs are availed of beyond working hours only. It is common knowledge that not all members of the railway staff avail of them. One has to be a member to do so by paying fees. The membership is also optional. That is why most of the staff employed in the institutes/clubs is part-time. As has been stated by the respondents, out of about 1741 employees engaged in 499 institutes and 332 clubs nearly half are part-time employees. The services rendered by the employees are not of a uniform nature. They are engaged for different services with different service conditions according to the requirement. The institutes/clubs further do not engage in uniform activities, the activities conducted by them varying depending upon the infrastructure and the facilities available at the respective places.
>
> 13. What is more important as far as the issue involved in this petition is concerned, is that the provision of the institutes/clubs is not mandatory. They are established as a part of the welfare measure for the railway staff and the kind of activities they conduct depend, among other things, on the funds available to them. The activities have to be tailored to the budgets since by their very nature the funds are not only limited but keep on fluctuating. If the costs of the activities go beyond the means, they have to be curtailed. So also, while starting a new activity, it is necessary to take into account its financial implications and the capacity of the institute/club to raise the necessary funds. The only varying component of the funds is the membership fee which is uncertain."

5. The facts of the matter under consideration are rather a pointer to the material difference between the canteens run in the railway establishments and that of the railway institute and clubs. This Court on a very poignant note observed that canteen services are no longer looked upon as a mere welfare activity but as an essential requirement where sizeable number of employees work. This Court went on to record that the same however, cannot be said to be of institutes and clubs.

6. While the appellants' contention is, as noticed above, the respondents contended that under the provisions of the Act and statute, it is obligatory for the students to reside in the hostel and avail of food services and there being an obligation to provide food services to the inmates of the hostel, the cafeteria is maintained and the obligations of the University cannot be run down. Mr. Gupta, the learned advocate appearing for Respondent 3 strenuously contended that there is per se a statutory and legal obligation and the University authorities are under a duty to maintain residential accommodation, promote the health and welfare of the students, make housing and messing arrangement and the existence of a cafeteria together with its staff cannot but be a part of such accommodation and arrangements. Strong reliance has also been placed on the Regulations for their true purport, scope and effect.

7. We find substance in the submission of Mr. Gupta. A perusal of the Regulations as framed under the statute (U.P. Agricultural University Act) unmistakably depict that the two conventional tests of implicit obligation and factors of overall control and supervision by the

University stand satisfied and the legal responsibility cannot be shifted to the students as is sought to be contended.

8. Reliance by Mr. Trivedi on Regulations 48, 49, 64, 65, 67, 68, 69, 78, 86, 92 and 93 though apparently may have some relevance pertaining to the issue, but reading the Regulations as a whole, it cannot be doubted that the same are only framed for moral, persuasive and democratic reasons so as to involve the students and to elicit their views, suggestions and ensure their participation in mutual exercise of cooperation. We, however, feel it expedient to quote hereinbelow a few of the Regulations which would unmistakably depict total control of the University in the matter of running and maintenance of the cafeteria and the same being as below:

> "54. It shall be compulsory for each student residing in a hostel to join the cafeteria of that hostel unless otherwise permitted by the Chief Warden of the hostel on the request of the guardian of the student, and the recommendation of the Warden of that hostel to take food with his guardian. In that event the Chief Warden shall inform all officers concerned of the University, for example, Comptroller, Dean Student Welfare, Hostel Warden, etc.
>
> 76. The comptroller of the University shall operate the 'GBPUA Food Services Account', issue cheques, maintain the cash book and classified accounts (unitwise/headwise) of income and expenditure as well as students' ledgers in his office like other accounts of the University. In addition to arranging timely payment of the cafeteria bills duly authorised by the Warden and ensuring recovery of the cafeteria dues from the students and staff members concerned the Comptroller shall be responsible for getting the cafeteria accounts audited cent-per cent regularly.
>
> 80. The Accounts Clerk-cum-Storekeeper of the hostel cafeteria shall be responsible for the proper and up-to-date maintenance of the cafeteria stores, store records and account books including daily-menu book, cash book, consumable stock book, daily preparation and sales register, cash credit and coupon transaction register, store daybook (*roznamcha*), indents, challans, bill register, daily-sales sheets, cash memo book, bill book, etc. under the direct supervision, control and guidance of the Hostel Manager. His functions and duties shall be as follows:
>
> 82. The other cafeteria staff including Tea Man, Head Cook, Bearers, etc. shall work in accordance with the instructions of the Hostel Manager/Warden. The duties of these staff members shall be defined/prescribed by the Warden of the hostel.
>
> 88. The accounts of the Warden's Office (bills and vouchers) shall be taken by the Hotel Manager to the Office of the Comptroller for scrutiny and checking.
>
> 92. The entire cafeteria staff shall work under the direct supervision of the Warden/Assistant Warden in accordance with the advice of the Food Committee and under the administrative control of the Chief Warden. All cases of appointments, termination of service and other punishments and promotions, rewards etc. shall be dealt with by the Chief Warden in consultation with the Warden and the Food Committee.
>
> 93. (i) All the appointments of cafeteria staff would be made by the Food Committee of the hostel with the approval of the Chief Warden.

(ii) The leave, annual increments, uniform, travelling allowance, etc. to the cafeteria staff shall be governed in accordance with the policies laid down by the Central Food Committee.

106. (i) The bills/vouchers/imprest/temporary advance adjustment accounts and monthly food accounts duly passed by the respective Food Secretary/Chairman, Food Committee to their entire satisfaction and entered in the Food Provision Control Register shall be sent to the Comptroller directly for scrutiny and payment/adjustment/recovery of dues expeditiously. The Wardens, Hostel Managers and the respective Food Secretaries will be fully responsible for making stock entries of all purchases made in respect of their hostels. The payment will be made only if a certificate in the following form is given on the bill (rubber stamp for which could be got made for convenience):

'Certified that the goods as per specification have been received and entered in the stock books.'

(ii) The Warden shall have full financial and administrative control of their hostel cafeteria funds and be responsible for up-to-date maintenance of account books and submission of bills/vouchers/adjustment accounts, the preparation of monthly food accounts and submission of monthly recovery lists accurately within time and according to the procedure prescribed in the Hostel Cafeteria Regulations. The Warden/Hostel Manager/Food Secretary concerned will be fully responsible for checking of rates charged in the bills and payments will be authorised on the basis of the certification.

107. (i) Similarly, the preparation of vouchers for adjustment account of temporary advances and recoupment of the permanent advance shall be done by the Accounts Clerk-cum-Storekeeper/Hostel Manager which shall be checked and signed by the Food Secretary, Warden expeditiously and the Warden shall ensure that no cash is drawn and retained by the hostel cafeteria when it is not required for its immediate expenditure.

109. The hostel cafeteria's Accounts Clerk-cum-Storekeeper shall be responsible to the Warden/Chief Warden on the one hand and on the other be also responsible to the Comptroller for correctness of the cafeteria accounts."

9. The detailed analysis as above has been introduced in this judgment so as to exhibit the control of the University in the matter of running of the cafeteria. As noticed above, a residential university having a canteen facility and the inmates of the hostel not being permitted to have food from outside cannot possibly be said to be a mere welfare service to the students. It is a requirement of the Regulations framed under the Act and thus having statutory sanction and force - the issue thus comes up for consideration as to whether it is a mere ancillary benefit conferred on to the inmates of the hostel or an essential requirement. The Regulations pertaining to the hostel accommodation and the supplies of food do not warrant any other conclusion than to treat it as an essential requirement so far as the inmates of the hostel are concerned. The involvement of the Vice-Chancellor, the Warden and the Food Managers who admittedly all belong to the University as employees thereof cannot negate the cry of the labour force asking for parity in their scale of pay. Regularisations will undoubtedly bringforth parity with the other employees of the University. The requirement of

the number of employees also cannot be brushed aside. More than 175 employees are required for the purpose of providing food to the inmates of the hostels – there are altogether 14 hostels and the inmates have to depend on the cafeteria for their food service since nobody else can, as a matter of fact, avoid the needs of the cafeteria – it is a requirement of the Regulation.

10. Admittedly, cafeteria employees need succour for livelihood – would they continue to remain half-fed and half-clad as long as they live – is this the society that we feel proud of? Is this the guarantee provided by the founding fathers of our Constitution or is this the concept of socialism which they conceived? None of the answers can possibly be in the affirmative. The situation is rather awesome and deplorable – the University by compulsion directs students to be residents of the hostel with a definite ban on having food from outside agencies excepting under special circumstances and the provider of food, namely the staff of the cafeteria ought not to be treated as an employee of the University – whose employees are they if we may ask and we think it would not be impertinent on our part to ask the same – is it the consumer of food? Since when the consumer of food becomes the employer? These are the questions which remain unanswered. The society shall have to thrive. The society shall have to prosper and this prosperity can only come in the event of there being a wider vision for total social good and benefit. It is not bestowing any favour on anybody but it is a mandatory obligation to see that the society thrives. The deprivation of the weaker section we had for long but time has now come to cry a halt and it is for the law courts to rise up to the occasion and grant relief to a seeker of a just cause and just grievance. Economic justice is not mere legal jargon but in the new millennium, it is the obligation for all to confer this economic justice on a seeker. Society is to remain, social justice is the order and economic justice is the rule of the day. A narrow pedantic approach to statutory documents no longer survives. The principle of corporate jurisprudence is now being imbibed on to industrial jurisprudence and there is a long catena of cases in regard thereto - the law thus is not a state of fluidity since the situation is more or less settled. As regards interpretation, widest possible amplitude shall have to be offered in the matter of interpretation of statutory documents under industrial jurisprudence. The draconian concept is no longer available. Justice - social and economic, as noticed above ought to be made available with utmost expedition so that the socialistic pattern of the society as dreamt of by the founding fathers can thrive and have its foundation so that the future generations do not live in the dark and cry for social and economic justice.

11. We can in this context, usefully record the observations of this Court in ***Parimal Chandra Raha* v. *LIC of India*** [1995 Supp (2) SCC 611], wherein this Court in para 31 of the Report observed

> "31. The facts on record on the other hand, show in unmistakable terms that canteen services have been provided to the employees of the Corporation for a long time and it is the Corporation which has been, from time to time, taking steps to provide the said services. The canteen committee, the cooperative society of the employees and the contractors have only been acting for and on behalf of the Corporation as its agencies to provide the said services. The Corporation has been taking active interest even in organising the canteen committees. It is further the Corporation which has been appointing the contractors to run the canteens and

entering into agreements with them for the purpose. The terms of the contract further show that they are in the nature of directions to the contractor about the manner in which the canteen should be run and the canteen services should be rendered to the employees. Both the appointment of the contractor and the tenure of the contract is as per the stipulations made by the Corporation in the agreement. Even the prices of the items served, the place where they should be cooked, the hours during which and the place where they should be served, are dictated by the Corporation. The Corporation has also reserved the right to modify the terms of the contract unilaterally and the contractor has no say in the matter. Further, the records show that almost all the workers of the canteen like the appellants have been working in the canteen continuously for a long time, whatever the mechanism employed by the Corporation to supervise and control the working of the canteen. Although the supervising and managing body of the canteen has changed hands from time to time, the workers have remained constant. This is apart from the fact that the infrastructure for running the canteen, viz., the premises, furniture, electricity, water etc. is supplied by the Corporation to the managing agency for running the canteen. Further, it cannot be disputed that the canteen service is essential for the efficient working of the employees and of the offices of the Corporation. In fact, by controlling the hours during which the counter and floor service will be made available to the employees of the canteen, the Corporation has also tried to avoid the waste of time which would otherwise be the result if the employees have to go outside the offices in search of such services. The service is available to all the employees in the premises of the office itself and continuously since inception of the Corporation, as pointed out earlier. The employees of the Corporation have all along been making the complaints about the poor or inadequate service rendered by the canteen to them, only to the Corporation and the Corporation has been taking steps to remedy the defects in the canteen service. Further, whenever there was a temporary breakdown in the canteen service, on account of the agitation or of strike by the canteen workers, it is the Corporation which has been taking active interest in getting the dispute resolved and the canteen workers have also looked upon the Corporation as their real employer and joined it as a party to the industrial dispute raised by them. In the circumstances, we are of the view that the canteen committees, the cooperative society of the employees and the contractors engaged from time to time are in reality the agencies of the Corporation and are, only a veil between the Corporation and the canteen workers. We have, therefore, no hesitation in coming to the conclusion that the canteen workers are in fact the employees of the Corporation."

12. The Regulations if read on the lines as noticed hereinbefore lead to the unmistakable conclusion that the employees of the cafeteria cannot but be termed to be the employees of the University.

13. It is on this score the High Court in the judgment impugned observed as below:

"The learned counsel also assailed the findings of the Labour Court on the question of relationship of master and servant. I have perused the findings and in my opinion this contention is also not correct. The Labour Court has referred to various documents,

> appointment letters, transfer orders which clearly demonstrate the control of the University over the cafeteria staff. The documents have been fully corroborated by oral evidence. No evidence was adduced on behalf of the University to controvert this documentary and oral evidence. In these facts and circumstances, it cannot be said that the findings suffer from any error of law. The relationship of employer and employee between the University and the cafeteria staff is established from the provisions contained in the Act, the statutes and the Regulations framed thereunder and also by the documentary and oral evidence filed before the Labour Court. The claim raised by the members of the cafeteria staff in the two cases has rightly been accepted. The impugned awards of the Labour Court are perfectly justified in the facts and circumstances of the case and do not suffer from any error of law."

14. In a faint attempt Mr. Trivedi wanted to introduce a pragmatic approach to the problem and contended that the law courts should consider the matter from different angles applying practical experience and factual contexts before arriving at the solution. It has been contended that the financial implications would be rather too much heavy on the University to be borne by it and unless State assistance is made available, it would be a well-nigh impossibility to meet the burden. We are, however, unable to record our concurrence thereto. Pragmatism does not necessarily be deprivation of the legitimate claims of the weaker sections of the society. The submission, if we may say with respect, is totally misplaced and does not warrant any further discussion thereon.

15. In that view of the matter, we do not see any merit in these two appeals. The appeals are dismissed. All interim orders are vacated. The University is directed to regularise the services of the employees in terms of the award passed by the Labour Court by 31-8-2000 so as to entitle the employees of the cafeteria to obtain the monthly wages on a par with the other employees of the University, as directed by the Labour Court. The arrears of salary, if there be any payable, as per the said directions, as confirmed by the High Court, be paid to the canteen staff concerned by 12 equal monthly instalments along with the regularised salary.

16. The learned Additional Solicitor General submitted that once the cafeteria staff employees are held to be direct employees of the University, then the University, in exercise of its entrepreneurial or managerial functions, can constitute a separate cadre of cafeteria staff employees with suitable hierarchy of posts in the said cadre with separate pay scales as would be commensurate with the other perquisites and facilities available to all such staff under the relevant Regulations framed by the University. We are not concerned with this aspect of the matter in the present proceedings, as such we are not expressing any opinion thereon excepting recording that the parties would be at liberty to take appropriate steps in accordance with law.

17. The appeals are accordingly dismissed with no order as to costs.

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Management of Chandramalai Estate **v.** *Its Workmen*

AIR 1960 SC 902

K.C. DAS GUPTA, J. – On August 9, 1955, the Union of the workmen of the Chandramalai Estate submitted to the Manager of the Estate a memorandum containing fifteen demands. Though the Management agreed to fulfil some of the demands the principal demands remained unsatisfied. On August 29, 1955, the Labour Officer, Trichur, who had in the meantime been apprised of the position by both the management of the Estate as well as the Labour Union advised mutual negotiations between the representatives of the management and workers. Ultimately the matter was recommended by the Labour Officer to the Conciliation Officer Trichur for conciliation. The Conciliation Officer's efforts proved in vain. The last meeting for Conciliation appears to have been held on November 30, 1955. On the following day the Union gave a notice and the workmen went on a strike with effect from December 9, 1955. The strike ended on January 5, 1956. Prior to this, on January 5, the Government had referred the dispute as regards five of the demands for adjudication to the Industrial Tribunal, Trivandrum. Thereafter by an order dated June 11, 1956, the dispute was withdrawn from the Trivandrum Tribunal and referred to the Industrial Tribunal, Ernakulam. By its award dated October 17, 1957, the Tribunal granted the workmen's demands on all these issues. The present appeal has been preferred by the management of the Chandramalai Estate against the Tribunal's award on three of these issues. These three issues are stated in the reference thus:

> "1. Was the price realised by the management for the rice sold to the workers after decontrol excessive; and if so, are the workers entitled to get refund of the excessive value so collected?
>
> 2. Are the workers entitled to get cumbly allowance with retrospective effect from the date it was stopped and what should be the rate of such allowance?
>
> 3. Are the workers entitled to get wages for the period of the strike?"

(2) On the first issue the workmen's case was that after the control on rice was lifted by the Travancore-Cochin Government in April 1954, the management which continued to sell rice to the workmen, charged at the excessive rate of 12 annas per measure for the rice brought in excess of a quota for 1-1/2 measure per head. This according to the workmen was improper and unjustified and they claimed refund of the excess which they have been made to pay. The management's case was that the workmen were not bound to buy rice from the Estate's management and secondly, that only the actual cost price and not any excess had been charged. The tribunal held on a consideration of oral and documentary evidence that the management had charged more than the cost price and held that they were bound to refund the same.

(3) The second issue was in respect of a claim for cumbly allowance. Chandramalai Tea Estate is situated at a high altitude. It is not disputed that it had been customary for the Estates in this region to pay blanket allowance to workmen to enable them to furnish themselves with blankets to meet the rigours of the weather and that it had really become a part of the terms and conditions of service. But in spite of it the management of this Estate stopped payment of the allowance from 1949 onwards and resumed payment only in 1954.

The management's defence was that any dispute not having been raised about this till August 9, 1955, there was no reason for raising it at this late stage. The Tribunal rejected this contention and awarded cumbly allowance of Rs. 39 per workman – made up of Rs.7 per year for the year 1949, 1950 and 1951 and Rs. 9 per year for the years 1952 and 1953.

(4) On the third issue while the workmen pleaded that the strike was justified the management contended that it was illegal and unjustified. The Tribunal held that both parties were to blame for the strike and ordered the management to pay workers 50 per cent of their total emoluments for the strike period.

(5) On the question of excess price of rice having been collected the appellant's contention before us is limited to the question of fact, whether the Tribunal was right in its conclusion that more than cost price was realised. The Tribunal has based its conclusion as regards the price realised by the management on entries made in the management's own documents. As regards what such rice cost the management it held that for the months of April, July and August and September the price was shown by the management's documents while for May and June these documents did not disclose the price. For these two months the Tribunal held the market price of rice as proved by the workers' witness No. 6 to have been the price at which the Estate's management procured their rice. We are unable to see anything that would justify us in interfering with these conclusions of facts. Indeed the documents on which the Tribunal has based its conclusions were not even made part of the Paper-Book so that even if we had wanted to consider this question ourselves it would be impossible for us to do so. We are satisfied that the Tribunal was right in its conclusion as regards the cost price of rice to the management and the price actually realised by the management from workmen. The management's case that the workmen were charged only the cost price of rice has rightly been rejected by the Tribunal. The fact that workmen were not compelled to purchase rice from the management is hardly material; the management had opened the shop to help the workmen and if it is found that it charged excess rates, in fairness, the workmen must be reimbursed. The award in so far as it directed refund of the excess amount collected on the basis of the figures found by the Tribunal cannot therefore be successfully challenged.

(6) On the question of the cumbly allowance it is important to note that the only defence raised was that the demand had been made too late. The admitted fact that it had been regularly paid year after year for many years till it was stopped in 1949 is sufficient to establish the workmen's case that payment of a proper cumbly allownace had become a part of their conditions of service. We do not think that the mere fact that the workmen did not raise any dispute on the management's refusal to implement this condition of service till August 9, 1955 would be a sufficient reason to refuse them such payment. The management had acted arbitrarily and illegally in stopping payment of these allowances from 1949 to 1954. They cannot now be heard to say that they should not be asked to pay it merely because the years have already gone by. It is reasonable to think that even though the management did not pay the allowance the workmen had to provide blankets for themselves at their own expense. The Tribunal has acted justly in directing payment of the allowances to the workmen for the years 1949 to 1953. The correctness of the rates awarded by the Tribunal is not challenged before us. The Tribunal's award on this issue also is therefore maintained.

(7) This brings us to the question whether the tribunal was right in awarding 50 per cent of emoluments to the workmen for the strike period. It is clear that on November 30, 1955, the Union knew that conciliation attempts had failed. The next step would be a report by the Conciliation Officer, of such failure to the Government and it would have been proper and reasonable for the Union to address the Government at the same time and request that a reference should be made to the Industrial Tribunal. The Union however did not choose to wait and after giving notice on December 1, 1955 to the management that it had decided to strike from December 9, 1955, actually started the strike from that day. It has been urged on behalf of the appellant that there was nothing in the nature of the demands to justify such hasty action and in fairness the Union should have taken the normal and reasonable course provided by law by asking the Government to make a reference under the Industrial Disputes Act before it decided to strike. The main demands of the Union were about the cumbly allowance and the price of rice. As regards the cumbly allowance they had said nothing since 1949 when it was first stopped till the Union raised it on August 9, 1955. The grievance for collection of excess price of rice was more recent but even so it was not of such urgent nature that the interests of labour would have suffered irreparably if the procedure prescribed by law for settlement of such disputes through industrial tribunals was resorted to. After all it is not the employer only who suffers if production is stopped by strikes. While on the one hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such urgent and serious nature that it would not be reasonable to expect labour to wait till after making the Government to make a reference, in such cases, strike even before such a request has been made may well be justified. The present is not however one of such cases. In our opinion the workmen might well have waited for some time after conciliation efforts failed before starting a strike and in the meantime to have asked the Government to make the reference. They did not wait at all. The conciliation efforts failed on November 30, 1955, and on the very next day the Union made its decision on strike and sent the notice of the intended strike from 9th December, 1955, and on the 9th December, 1955 the workmen actually struck work. The Government appear to have acted quickly and referred the dispute on January 3, 1956. It was after this that the strike was called off. We are unable to see how the strike in such circumstances could be held to be justified.

(8) The Tribunal itself appears to have been in two minds on the question. Its conclusion appears to be that the strike though not fully justified, was half justified and half unjustified; we find it difficult to appreciate this curious concept of half justification. In any case, the circumstances of the present case do not support the conclusion that the strike was justified at all. We are bound to hold in view of the circumstances mentioned above that the Tribunal erred in holding that the strike was at least partially justified. The error is so serious that we are bound in the interests of justice to set aside the decision. There is, in our view, no escape from the conclusion that the strike was unjustified and so the workmen are not entitled to any wages for the strike period. We therefore allow the appeal in it and set aside the award in so far as it directed the payment of 50 per cent of the total emoluments for the strike period but maintain the rest of the award.

* * * * *

Syndicate Bank **v.** *K. Umesh Nayak*

(1994) 5 SCC 572

P.B. SAWANT, J. - These appeals have been referred to the Constitution Bench in view of the apparent conflict of opinions expressed in three decisions of this Court - a three-Judge Bench decision in ***Churakulam Tea Estate (P) Ltd.*** **v.** ***Workmen*** [AIR 1969 SC 998] and a two-Judge Bench decision in ***Crompton Greaves Ltd.*** **v.** ***Workmen*** [(1978) 3 SCC 155] on the one hand, and a two-Judge Bench decision in ***Bank of India*** **v.** ***T.S. Kelawala*** [(1990) 4 SCC 744] on the other. The question is whether workmen who proceed on strike, whether legal or illegal, are entitled to wages for the period of strike? In the first two cases, viz., ***Churakulam Tea Estate*** and ***Crompton Greaves***, the view taken is that the strike must be both legal and justified to entitle the workmen to the wages for the period of strike whereas the latter decision in ***T.S. Kelawala*** has taken the view that whether the strike is legal or illegal, the employees are not entitled to wages for the period of strike. To keep the record straight, it must be mentioned at the very outset that in the latter case, viz., ***T.S. Kelawala*** the question whether the strike was justified or not, was not raised and, therefore, the further question whether the employees were entitled to wages if the strike is justified, was neither discussed nor answered. Secondly, the first two decisions, viz., ***Churakulam Tea Estate*** and ***Crompton Greaves*** were not cited at the Bar while deciding the said case and hence there was no occasion to consider the said decisions there. The decisions were not cited probably because the question of the justifiability or otherwise of the strike did not fall for consideration. It is, however, apparent from the earlier two decisions, viz., ***Churakulam Tea Estate*** and ***Crompton Greaves*** that the view taken there is not that the employees are entitled to wages for the strike period merely because the strike is legal. The view is that for such entitlement the strike has both to be legal and justified. In other words, if the strike is illegal but justified or if the strike is legal but unjustified, the employees would not be entitled to the wages for the strike period. Since the question whether the employees are entitled to wages, if the strike is justified, did not fall for consideration in the latter case, viz., in ***T.S. Kelawala***, there is, as stated in the beginning, only an apparent conflict in the decisions.

CA No. 2710 of 1991*:*

3. On 10-4-1989 a memorandum of settlement was signed by the Indian Banks' Association and the All Indian Bank Employees' Unions including the National Confederation of Bank Employees as the fifth bipartite settlement. The appellant-Bank and the respondent-State Bank Staff Union through their respective federations were bound by the said settlement. In terms of clauses 8(*d*) and 25 of the memorandum of the said settlement, the appellant-Bank and the respondent-Staff Union had to discuss and settle certain service conditions. Pursuant to these discussions, three settlements were entered into between the parties on 9-6-1989. These settlements were under Section 2(*p*) read with Section 18(1) of the Industrial Disputes Act, 1947 (the 'Act'). Under these settlements, the employees of the appellant-Bank were entitled to certain advantages over and above those provided under the All India Bipartite Settlement of 10-4-1989. The said benefits were to be given to the employees retrospectively with effect from 1-11-1989. It appears that the appellant-Bank did not immediately implement the said settlement. Hence, the employees' Federation sent telex

message to the appellant-Bank on 22-6-1989 calling upon it to implement the same without further loss of time. The message also stated that the employees would be compelled to launch agitation for implementation of the settlement as a consequence of which the working of the Bank and the service to the customers would be affected. In response to this, the Bank in its reply dated 27-6-1989 stated that it was required to obtain the Government's approval for granting the said extra benefits and that it was making efforts to obtain the Government's approval as soon as possible. Hence the employees' Federation should, in the meanwhile, bear it with. On 24-7-1989 the Employees' Federation again requested the Bank by telex of even date to implement the said settlement forthwith, this time, warning the Bank that in case of its failure to do so, the employees would observe a day's token strike after 8-8-1989. The Bank's response to this message was the same as on the earlier occasion. On 18-8-1989, the employees' Federation wrote to the Bank that the settlements signed were without any precondition that they were to be cleared by the Government and hence the Bank should implement the settlement without awaiting the Government's permission. The Federation also, on the same day, wrote to the Bank calling its attention to the provisions of Rule 58.4 of the Industrial Disputes (Central) Rules, 1957 (the 'Rules') and requesting it to forthwith forward copies of the settlements to the functionaries mentioned in the said rule. By its reply of 23-8-1989 the Bank once again repeated its earlier stand that the Bank is required to obtain Government's approval for granting the said extra benefits and it was vigorously pursuing the matter with the Government for the purpose. It also informed the Federation that the Government was actively considering the proposal and an amicable solution would soon be reached and made a request to the employees' Federation to exercise restraint and bear with it so that their efforts with the Government may not be adversely affected. By another letter of the same date, the Bank informed the Federation that they would forward copies of the agreements in question to the authorities concerned as soon as the Government's approval regarding implementation of the agreement was received. The Federation by the letter of 1-9-1989 complained to the Bank that the Bank had been indifferent in complying with the requirements of the said Rule 58.4 and hence the Federation itself had sent copies of the settlements to the authorities concerned, as required by the said rule.

4. On the same day, i.e., 1-9-1989 the Federation issued a notice of strike demanding immediate implementation of all agreements/ understandings reached between the parties on 10-4-1989 and 9-6-1989 and the payment of arrears of pay and allowances pursuant to them. As per the notice, the strike was proposed to be held on three different days beginning from 18-9-1989. At this stage, the Deputy Chief Labour Commissioner and Conciliation Officer (Central), Bombay wrote both to the Bank and the Federation stating that he had received information that the workmen in the Bank through the employees' Federation had given a strike call for 18-9-1989. No formal strike notice in terms of Section 22 of the Act had, however, been received by him. He further informed that he would be holding conciliation proceedings under Section 12 of the Act in the office of the Regional Labour Commissioner, Bombay on 14-9-1989 and requested both to make it convenient to attend the same along with a statement of the case in terms of Rule 41(*a*) of the Rules.

5. The conciliation proceedings were held on 14-9-1989 and thereafter on 23-9-1989. On the latter date, the employees' Federation categorically stated that no dispute as such existed.

The question was only of implementation of the agreements/understandings reached between the parties on 10-4-1989 and 9-6-1989. However, the Federation agreed to desist from direct action if the Bank would give in writing that within a fixed time they will implement the agreements/understandings and pay the arrears of wages etc. under them. The Bank's representatives stated that the Bank had to obtain prior approval of the Government for implementation of the settlements and as they were the matters with the Government for obtaining its concurrence, the employees should not resort to strike in the larger interests of the community. He also pleaded for some more time to examine the feasibility of resolving the matter satisfactorily. The conciliation proceedings were thereafter adjourned to 26-9-1989. On this date, the Bank's representatives informed that the Government's approval had not till then been obtained, and prayed for time till 15-10-1989. The next meeting was held on 27-9-1989. The Conciliation Officer found that there was no meeting ground and no settlement could be arrived at. However, he kept the conciliation proceedings alive by stating that in order to explore the possibility of bringing about an understanding in the matter, he would further hold discussions on 6-10-1989.

6. On 1-10-1989, the Employees' Federation gave another notice of strike stating that the employees would strike work on 16-10-1989 to protest against the inaction of the Bank in implementing the said agreements/settlements validly arrived at between the parties. In the meeting held on 6-10-1989, the Conciliation Officer discussed the notice of strike. It appears that in the meanwhile on 3-10-1989 the employees' Federation had filed Writ Petition No. 13764 of 1989 in the High Court for a writ of mandamus to the Bank to implement the three settlements dated 9-6-1989. In that petition, the Federation had obtained an order of interim injunction on 6-10-1989 restraining the Bank from giving effect to the earlier settlement dated 10-4-1989 and directing it first to implement the settlements dated 9-6-1989. It appears further that the employees had in the meanwhile, disrupted normal work in the Bank and had resorted to gherao. The Bank brought these facts, viz., filing of the writ petition and the interim order passed therein as well as the disruption of the normal work and resort to gheraos by the employees, to the notice of the Conciliation Officer. The meeting before the Conciliation Officer which was fixed on 13-10-1989 was adjourned to 17-10-1989 on which date, it was found that there was no progress in the situation. It was on this date that the employees' Federation gave a letter to the Conciliation Officer requesting him to treat the conciliation proceedings as closed. However, even thereafter, the Conciliation Officer decided to keep the conciliation proceedings open to explore the possibility of resolving the matter amicably.

7. On 12-10-1989 the Bank issued a circular stating therein that if the employees went ahead with the strike on 16-10-1989, the Management of the Bank would take necessary steps to safeguard the interests of the Bank and would deduct the salary for the days the employees would be on strike, on the principle of "no work, no pay". In spite of the circular, the employees went on strike on 16-10-1989 and filed a writ petition on 7-11-1989 to quash the circular of 12-10-1989 and to direct the Bank not to make any deduction of salary for the day of the strike.

8. The said writ petition was admitted on 8-11-1989 and an interim injunction was given by the High Court restraining the Bank from deducting the salary of the employees for 16-10-1989.

9. Before the High Court, it was not disputed that the Bank was a public utility service and as such Section 22 of the Act applied. It was the contention of the Bank that since under the provisions of sub-section (1)(*d*) of the said Section 22, the employees were prohibited from resorting to strike during the pendency of the conciliation proceedings and for seven days after the conclusion of such proceedings, and since admittedly the conciliation proceedings were pending to resolve an industrial dispute between the parties, the strike in question was illegal. The industrial dispute had arisen because while the Bank was required to take the approval of the Central Government for the settlements in question, the contention of the employees was that no such approval was necessary and there was no such condition incorporated in the settlements. This being an industrial dispute within the meaning of the Act, the conciliation proceedings were validly pending on the date of the strike. As against this, the contention on behalf of the employees was that there could be no valid conciliation proceedings as there was no industrial dispute. The settlements were already arrived at between the parties solemnly and there could be no further industrial dispute with regard to their implementation. Hence, the conciliation proceedings were *non est*. The provisions of Section 22(1)(*d*) did not, therefore, come into play.

10. The learned Single Judge upheld the contention of the Bank and held that the strike was illegal, and relying upon the decision of this Court in ***T.S. Kelawala*** case dismissed the writ petition of the employees upholding the circular under which the deduction of wages for the day of the strike was ordered. Against the said decision, the employees' Federation preferred Letters Patent Appeal before the Division Bench of the High Court and the Division Bench by its impugned judgment reversed the decision of the learned Single Judge by accepting the contention of the employees and negativing that of the Bank. The Division Bench, in substance, held that the approval of the Central Government as a condition precedent to their implementation was not incorporated in the settlements nor was such approval necessary. Hence, there was no valid industrial dispute for which the conciliation proceedings could be held. Since the conciliation proceedings were invalid, the provisions of Section 22(1)(*d*) did not apply. The strike was, therefore, not illegal. The Court also held that the strike was, in the circumstances, justified since it was the Bank Management's unjustified attitude in not implementing the settlements, which was responsible for the strike. The Bench then relied upon two decisions of this Court in ***Churakulam Tea Estate*** and ***Crompton Greaves*** cases and held that since the strike was legal and justified, no deduction of wages for the strike day could be made from the salaries of the employees. The Bench thus allowed the appeal and quashed the circular of the 12-10-1989.

11. Since the matter has been referred to the larger bench on account of the seeming difference of opinion expressed in ***T.S. Kelawala*** and the earlier decisions in ***Churakulam Tea Estate*** and ***Crompton Greaves***, we will first discuss the facts and the view taken in the earlier two decisions.

12. In ***Churakulam Tea Estate*** which is a decision of three learned Judges, the facts were that the appellant-Tea Estate which was a member of the Planter's Association of Kerala

(South India), from time to time since 1946, used to enter into agreements with the representatives of the workmen, for payment of bonus. In respect of the years 1957, 1958 and 1959, there was a settlement dated 25-1-1960 between the Managements of the various plantations and their workers relating to payment of bonus. The agreement provided that it would not apply to the appellant-Tea Estate since it had not earned any profit during the said years. On the ground that it was not a party to the agreement in question, the appellant declined to pay any bonus for the said three years. The workmen started agitation claiming bonus. The conciliation proceedings in that regard failed. All 27 workers in the appellant's factory struck work on the afternoon of 30-11-1961. The Management declined to pay wages for the day of the strike to the said factory workers. The Management also laid off without compensation all the workers of the estate from 1-12-1961 to 8-12-1961. By its order dated 24-5-1962, the State Government referred to the Industrial Tribunal three questions for adjudication one of which was whether the factory workmen were entitled to wages for the day of the strike.

13. The Tribunal took the view that the strike was both legal and justified and hence directed the appellant to pay wages. This Court noted that at the relevant time, conciliation proceedings relating to the claim for bonus had failed and the question of referring the dispute for adjudication to the Tribunal was under consideration of the Government. The Labour Minister had called for a conference of the representatives of the Management and workmen and the conference had been fixed on 23-11-1961. The representatives of the workmen attended the conference, while the Management boycotted the same. It was the case of the workmen that it was to protest against the recalcitrant attitude of the Management in not attending the conference that the workers had gone on strike from 1 p.m. on the day in question. On behalf of the Management, the provisions of Section 23(*a*) of the Act were pressed into service to contend that the strike resorted to by the factory workers was illegal. The said provisions read as follows:

> 23. No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lockout -
>
> (*a*) during the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

This Court noted that there were no conciliation proceedings pending on 30-11-1961 when the factory workers resorted to strike and hence the strike was not hit by the aforesaid provision. The Court further observed that if the strike was hit by Section 23(*a*), it would be illegal under Section 24(1)(*i*) of the Act. Since, however, it was not so hit, it followed that the strike in this case could not be considered to be illegal. We may quote the exact observations of the Court which are as follows:

> Admittedly there were no conciliation proceedings pending before such a Board on 30-11-1961, the day on which the factory workers went on strike and hence the strike does not come under Section 23(*a*). No doubt if the strike, in this case, is hit by Section 23(*a*), it will be illegal under Section 24(1)(*i*) of the Act; but we have already held that it does not come under Section 23(*a*) of the Act. It follows that the strike, in this case, cannot be considered to be illegal.

Alternatively, it was contended on behalf of the Management that in any event, the strike in question was thoroughly unjustified. It was the Management's case that it had participated in the conciliation proceedings and when those proceedings failed, the question of referring the dispute was pending before the Government. The workmen could have made a request to the Government to refer the dispute for adjudication and, therefore, the strike could not be justified. Support for this was also sought by the Management from the observations made by this Court in ***Chandramalai Estate, Ernakulam*** **v.** ***Workmen*** [AIR 1960 SC 902]. In that case, this Court had deprecated the conduct of workmen going on strike without waiting for a reasonable time to know the result of the report of the Conciliation Officer. This Court held that the said decision did not support the Management since the strike was not directly in connection with the demand for bonus but was as a protest against the unreasonable attitude of the Management in boycotting the conference held on 23-11-1961 by the Labour Minister of the State. Hence, this Court held that the strike was not unjustified. In view of the fact that there was no breach of Section 23(*a*) and in view also of the fact that in the aforesaid circumstances, the strike was not unjustified, the Court held that the factory workers were entitled for wages for that day and the Tribunal's award in that behalf was justified.

14. In ***Crompton Greaves Ltd.*** the facts were that on 27-12-1967, the appellant-Management intimated the workers' Union its decision to reduce the strength of the workmen in its branch at Calcutta on the ground of severe recession in business. Apprehending mass retrenchment of the workmen, the Union sought the intervention of the Minister in charge of Labour and the Labour Commissioner, in the matter. Thereupon, the Assistant Labour Commissioner arranged a joint conference of the representatives of the Union and of the Company in his office, with a view to explore the avenues for an amicable settlement. Two conferences were accordingly held on 5-1-1968 and 9-1-1968 in which both the parties participated. As a result of these conferences, the Company agreed to hold talks with the representatives of the Union at its Calcutta office on the morning of 10-1-1968. The talk did take place but no agreement could be arrived at. The Assistant Labour Commissioner continued to use his good offices to bring about an amicable settlement through another joint conference which was scheduled for 12-1-1968. On the afternoon of 10-1-1968, the Company without informing the Labour Commissioner that it was proceeding to implement its proposed scheme of retrenchment, put up a notice of retrenching 93 of the workmen in its Calcutta Office. Treating this step as a serious one demanding urgent attention and immediate action, the workmen resorted to strike w.e.f. 11-1-1968 after giving notice to the appellant and the Labour Directorate and continued the same up to 26-6-1968. In the meantime, the industrial dispute in relation to the retrenchment of the workmen was referred by the State Government to the Industrial Tribunal on 1-3-1968. By a subsequent order dated 13-12-1968, the State Government also referred the issue of the workmen's entitlement to wages for the strike period, for adjudication to the Industrial Tribunal. The Industrial Tribunal accepted the workmen's demand for wages for the period from 11-1-1968 to the end of February 1968 but rejected their demand for the remaining period of the strike observing that "the redress for retrenchment having been sought by the Union itself through the Tribunal, there remained no justification for the workmen to continue the strike".

15. In the appeal filed by the Management against the award of the Tribunal in this Court, the only question that fell for determination was whether the award of the Tribunal granting the striking workmen wages for the period from 11-1-1968 to 29-2-1968 was valid. In paragraph 4 of the judgment, this Court observed as follows:

> 4. It is well settled that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as justified. A strike is legal if it does not violate any provision of the statute. Again, a strike cannot be said to be unjustified unless the reasons for it are entirely perverse or unreasonable. Whether a particular strike was justified or not is a question of fact which has to be judged in the light of the facts and circumstances of each case. It is also well settled that the use of force or violence or acts of sabotage resorted to by the workmen during a strike disentitles them to wages for the strike period.

After observing thus, the Court formulated the following two questions, viz., (1) whether the strike in question was illegal or unjustified? and (2) whether the workmen resorted to force or violence during the said period, that is, 11-1-1968 to 29-2-1968. While answering the first question, the Court pointed out that no specific provision of law has been brought to its notice which rendered the strike illegal during the period under consideration. The strike could also not be said to be unjustified as before the conclusion of the talks for conciliation which were going on through the instrumentality of the Assistant Labour Commissioner, the Company had retrenched as many as 93 of its workmen without even intimating the Labour Commissioner that it was carrying out its proposed plan of effecting retrenchment of the workmen. Hence, the Court answered the first question in the negative. In other words, the Court held that the strike was neither illegal nor unjustified. On the second question also, the Court held that there was no cogent and disinterested evidence to substantiate the charge that the striking workmen had resorted to force or violence. That was also the finding of the Tribunal and hence the Court held that the wages for the strike period could not be denied to the workmen on that ground as well.

16. It will thus be apparent from this decision that on the facts, it was established that there was neither a violation of a provision of any statute to render the strike illegal nor in the circumstances it could be held that the strike was unjustified. On the other hand, it was the Management, by taking a precipitatory action while the conciliation proceedings were still pending, which had given a cause to the workmen to go on strike.

18. In ***Kairbetta Estate, Kotagiri*** **v.** ***Rajamanickam*** [AIR 1960 SC 893], this Court observed as follows:

> Just as a strike is a weapon available to the employees for enforcing their industrial demands, a lockout is a weapon available to the employer to persuade by a coercive process the employees to see his point of view and to accept his demands. In the struggle between capital and labour, the weapon of strike is available to labour and is often used by it, so is the weapon of lockout available to the employer and can be used by him. The use of both the weapons by the respective parties must, however, be subject to the relevant provisions of the Act. Chapter V which deals with

strikes and lockouts clearly brings out the antithesis between the two weapons and the limitations subject to which both of them must be exercised.

19. In ***Chandramalai Estate*** the facts were that on 9-8-1955, the workers' Union submitted to the Management a charter of fifteen demands. Though the Management agreed to fulfil some of the demands, the principal demands remained unsatisfied. On 29-8-1955, the Labour Officer, Trichur, who had in the meantime been apprised of the situation both by the Management and the workers' Union, advised mutual negotiations between the representatives of the Management and the workers. Ultimately, the matter was recommended by the Labour Officer to the Conciliation Officer, Trichur for conciliation. The Conciliation Officer's efforts proved in vain. The last meeting for conciliation was held on 30-11-1955. On the following day, the Union gave a strike notice and the workmen went on strike w.e.f. 9-12-1955. The strike ended on 5-1-1956. Prior to this, on 5-1-1956, the Government had referred the dispute with regard to five of the demands for adjudication to the Industrial Tribunal, Trivandrum. Thereafter, by its order dated 11-6-1956, the dispute was withdrawn from the Trivandrum Tribunal and referred to the Industrial Tribunal, Ernakulam. By its award dated 19-10-1957, the Tribunal granted all the demands of the workmen. The appeal before this Court was filed by the Management on three of the demands. One of the issues was: "Are the workers entitled to get wages for the period of the strike?". On this issue, before the Tribunal, the workmen had pleaded that the strike was justified while the Management contended that strike was both illegal and unjustified. The Tribunal had recorded a finding that both the parties were to blame for the strike and ordered the Management to pay the workers 50% of their total emoluments for the strike period.

20. This Court while dealing with the said question held that it was clear that on 30-11-1955, the Union knew that the conciliation attempts had failed and the next step would be the report by the Conciliation Officer to the Government. It would, therefore, have been proper and reasonable for the workers' Union to address the Government and request that a reference be made to the Industrial Tribunal. The Union did not choose to wait and after giving notice to the Management on 1-12-1955 that it had decided to strike work from 9-12-1955, actually started the strike from that date. The Court also held that there was nothing in the nature of the demands made by the Union to justify the hasty action. The Court then observed as under:

> The main demands of the Union were about the cumbly allowance and the price of rice. As regards the cumbly allowance they had said nothing since 1949 when it was first stopped till the Union raised it on 9-8-1955. The grievance for collection of excess price of rice was more recent but even so it was not of such an urgent nature that the interests of labour would have suffered irreparably if the procedure prescribed by law for settlement of such disputes through Industrial Tribunals was resorted to. After all it is not the employer only who suffers if production is stopped by strikes. While on the one hand it has to be remembered that strike is a legitimate and sometimes unavoidable weapon in the hands of labour it is equally important to remember that indiscriminate and hasty use of this weapon should not be encouraged. It will not be right for labour to think that for any kind of demand a strike can be commenced with impunity without exhausting reasonable avenues for peaceful achievement of their objects. There may be cases where the demand is of such an

urgent and serious nature that it would not be reasonable to expect labour to wait till after asking the Government to make a reference. In such cases, strike even before such a request has been made may well be justified. The present is not however one of such cases. In our opinion the workmen might well have waited for some time after conciliation efforts failed before starting a strike and in the meantime to have asked the Government to make a reference.

They did not wait at all. The conciliation efforts failed on 30-11-1955, and on the very next day the Union made its decision on strike and sent the notice of the intended strike from the 9-12-1955, and on the 9-12-1955, the workmen actually struck work. The Government appear to have acted quickly and referred the dispute on 3-1-1956. It was after this that the strike was called off. We are unable to see how the strike in such circumstances could be held to be justified.

21. In ***India General Navigation and Railway Co. Ltd.*** **v.** ***Workmen*** [AIR 1960 SC 219], this Court while dealing with the issues raised there, observed as follows:

In the first place, it is a little difficult to understand how a strike in respect of a public utility service, which is clearly, illegal, could at the same time be characterised as 'perfectly justified'. These two conclusions cannot in law coexist. The law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between an illegal strike which may be said to be justifiable and one which is not justifiable. This distinction is not warranted by the Act, and is wholly misconceived, specially in the case of employees in a public utility service. Every one participating in an illegal strike, is liable to be dealt with departmentally, of course, subject to the action of the Department being questioned before an Industrial Tribunal, but it is not permissible to characterise an illegal strike as justifiable. The only question of practical importance which may arise in the case of an illegal strike, would be the kind or quantum of punishment, and that, of course, has to be modulated in accordance with the facts and circumstances of each case. Therefore, the tendency to condone what has been declared to be illegal by statute, must be deprecated, and it must be clearly understood by those who take part in an illegal strike that thereby they make themselves liable to be dealt with by their employers. There may be reasons for distinguishing the case of those who may have acted as mere dumb driven cattle from those who have taken an active part in fomenting the trouble and instigating workmen to join such a strike, or have taken recourse to violence.

22. We may now refer to the decision of this Court in the ***T.S. Kelawala*** case where allegedly a different view has been taken from the one taken in the aforesaid earlier decisions and in particular in ***Churakulam Tea Estate*** and ***Crompton Greaves*** cases.

23. The facts in the case were that some demands for wage revision made by the employees of all the banks were pending at the relevant time and in support of the said demands, the All India Bank Employees Association, gave a call for a countrywide strike. The appellant-Bank issued a circular on 23-9-1977 to all its branch managers and agents to deduct wages of the employees who participate in the strike for the days they go on strike.

The employees' Union gave a call for a four-hour strike on 29-12-1977. Hence, the Bank on 27-12-1977 issued a circular warning the employees that they would be committing a breach of their contract of service if they participated in the strike and that they would not be entitled to draw the salary for the full day if they do so and consequently they need not report for work for the rest of the working hours of that day. Notwithstanding it, the employees went on four-hour strike from the beginning of the working hours on 29-12-1977. There was no dispute that banking hours for the public covered the said four hours. The employees, however, resumed work on that day after the strike hours and the Bank did not prevent them from doing so. On 16-1-1978, the Bank issued a circular directing its managers and agents to deduct the full day's salary of those of the employees who had participated in the strike. The employees' union filed a writ petition in the High Court for quashing the circular. The petition was allowed. The Bank's Letters Patent Appeal in the High Court also came to be dismissed. The Bank preferred an appeal against the said decision of the High Court. On these facts, the only questions relevant for our present purpose which were raised in the case before the High Court as well as in this Court were whether the Bank was entitled to deduct wages of workmen for the period of strike and further whether the Bank was entitled to deduct wages for the whole day or *pro rata* only for the hours for which the employees had struck work. The incidental questions were whether the contract of employment was divisible and whether when the service rules and the regulations did not provide for deduction of wages, the Bank could do so by an administrative circular. We are not concerned with the incidental questions in this case. What is necessary to remember is the question whether the strike was legal or illegal and whether it was justified or unjustified was not raised either before the High Court or in this Court. The only question debated was whether, even assuming that the strike was legal, the Bank was entitled to deduct wages as it purported to do under the circular in question. It is while answering this question that this Court held that the legality or illegality of the strike had nothing to do with the liability for the deduction of the wages. Even if the strike is legal, it does not save the workers from losing the salary for the period of the strike. It only saves them from disciplinary action, since the Act impliedly recognises the right to strike as a legitimate weapon in the hands of the workmen. However, this weapon is circumscribed by the provisions of the Act and the striking of work in contravention of the said provisions makes it illegal. The illegal strike is a misconduct which invites disciplinary action while the legal strike does not do so. However, both legal as well as illegal strike invite deduction of wages on the principle that whoever voluntarily refrains from doing work when it is offered to him, is not entitled for payment for work he has not done. In other words, the Court upheld the dictum "no work no pay". Since it was not the case of the employees that the strike was justified, neither arguments were advanced on that basis nor were the aforesaid earlier decisions cited before the Court.

24. There is, therefore, nothing in the decisions of this Court in ***Churakulam Tea Estate*** and ***Crompton Greaves*** cases or the other earlier decisions cited above which is contrary to the view taken in ***T.S. Kelawala***. What is held in the said decisions is that to entitle the workmen to the wages for the strike period, the strike has both to be legal and justified. In other words, if the strike is only legal but not justified or if the strike is illegal though justified, the workers are not entitled to the wages for the strike period. In fact, in ***India General Navigation*** case the Court has taken the view that a strike which is illegal cannot at

the same time be justifiable. According to that view, in all cases of illegal strike, the employer is entitled to deduct wages for the period of strike and also to take disciplinary action. This is particularly so in public utility services.

25. We, therefore, hold endorsing the view taken in ***T.S. Kelawala*** that the workers are not entitled to wages for the strike period even if the strike is legal. To be entitled to the wages for the strike period, the strike has to be both legal and justified. Whether the strike is legal or justified are questions of fact to be decided on the evidence on record. Under the Act, the question has to be decided by the industrial adjudicator, it being an industrial dispute within the meaning of the Act.

26. In the present case the High Court, relying on ***Churakulam Tea Estate*** and ***Crompton Greaves*** cases has held that the strike was both legal and justified. It was legal according to the High Court because the reference to the conciliation proceedings was itself illegal and, therefore, in the eye of the law, no conciliation proceedings were pending when the employees struck work. The strike was, further justified according to the High Court because the Bank had taken a recalcitrant attitude and had insisted upon obtaining the approval of the Central Government for the implementation of the agreements in question, when no such approval was either stipulated in the agreements or required by law. We are afraid that the High Court has exceeded its jurisdiction in recording the said findings. It is the industrial adjudicator who had the primary jurisdiction to give its findings on both the said issues. Whether the strike was legal or illegal and justified or unjustified, were issues which fell for decision within the exclusive domain of the industrial adjudicator under the Act and it was not primarily for the High Court to give its findings on the said issues. The said issues had to be decided by taking the necessary evidence on the subject. We find nothing in the decision of the High Court to enlighten us as to whether notwithstanding the fact that the agreements in question had not stipulated that their implementation was dependent upon the approval of the Central Government; in fact, the Bank was not duty-bound in law to take such approval. If it was obligatory for the Bank to do so, then it mattered very little whether the agreements in question incorporated such a stipulation or not. If the approval was necessary, then there did exist a valid industrial dispute between the parties and the conciliation proceedings could not be said to be illegal. It must be noted in this connection that the said agreements provided for benefits over and above the benefits which were available to the employees of the other Banks. Admittedly, the employees struck work when the conciliation proceedings were still pending. Further, the question whether the implementation of the said agreements was of such an urgent nature as could not have waited the outcome of the conciliation proceedings and if necessary, of the adjudication proceedings under the Act, was also a matter which had to be decided by the industrial adjudicator to determine the justifiability or unjustifiability of the strike.

27. It has to be remembered in this connection that a strike may be illegal if it contravenes the provisions of Sections 22, 23 or 24 of the Act or of any other law or of the terms of employment depending upon the facts of each case. Similarly, a strike may be justified or unjustified depending upon several factors such as the service conditions of the workmen, the nature of demands of the workmen, the cause which led to the strike, the urgency of the cause or the demands of the workmen, the reason for not resorting to the dispute resolving

machinery provided by the Act or the contract of employment or the service rules and regulations etc. An enquiry into these issues is essentially an enquiry into the facts which in some cases may require taking of oral and documentary evidence. Hence such an enquiry has to be conducted by the machinery which is primarily invested with the jurisdiction and duty to investigate and resolve the dispute. The machinery has to come to its findings on the said issue by examining all the pros and cons of the dispute as any other dispute between the employer and the employee.

28. Shri Garg appearing for the employees did not dispute the proposition of law that notwithstanding the fact that the strike is legal, unless it is justified, the employees cannot claim wages for the strike period. However, he contended that on the facts of the present case, the strike was both legal and justified. We do not propose to decide the said issues since the proper forum for the decision on the said issues in the present case is the adjudicator under the Act.

29. The strike as a weapon was evolved by the workers as a form of direct action during their long struggle with the employers. It is essentially a weapon of last resort being an abnormal aspect of the employer-employee relationship and involves withdrawal of labour disrupting production, services and the running of the enterprise. It is abuse by the labour of their economic power to bring the employer to see and meet their viewpoint over the dispute between them. In addition to the total cessation of work, it takes various forms such as working to rule, go slow, refusal to work overtime when it is compulsory and a part of the contract of employment, "irritation strike" or staying at work but deliberately doing everything wrong, "running-sore strike", i.e., disobeying the lawful orders, sit-down, stay-in and lie-down strike etc. etc. The cessation or stoppage of works whether by the employees or by the employer is detrimental to the production and economy and to the well-being of the society as a whole. It is for this reason that the industrial legislation while not denying the right of workmen to strike, has tried to regulate it along with the right of the employer to lockout and has also provided a machinery for peaceful investigation, settlement, arbitration and adjudication of the disputes between them. Where such industrial legislation is not applicable, the contract of employment and the service rules and regulations many times, provide for a suitable machinery for resolution of the disputes. When the law or the contract of employment or the service rules provide for a machinery to resolve the dispute, resort to strike or lockout as a direct action is prima facie unjustified. This is, particularly so when the provisions of the law or of the contract or of the service rules in that behalf are breached. For then, the action is also illegal.

30. The question whether a strike or lockout is legal or illegal does not present much difficulty for resolution since all that is required to be examined to answer the question is whether there has been a breach of the relevant provisions. However, whether the action is justified or unjustified has to be examined by taking into consideration various factors some of which are indicated earlier. In almost all such cases, the prominent question that arises is whether the dispute was of such a nature that its solution could not brook delay and await resolution by the mechanism provided under the law or the contract or the service rules. The strike or lockout is not to be resorted to because the party concerned has a superior bargaining power or the requisite economic muscle to compel the other party to accept its demand. Such

indiscriminate use of power is nothing but assertion of the rule of "might is right". Its consequences are lawlessness, anarchy and chaos in the economic activities which are most vital and fundamental to the survival of the society. Such action, when the legal machinery is available to resolve the dispute, may be hard to justify. This will be particularly so when it is resorted to by the section of the society which can well await the resolution of the dispute by the machinery provided for the same. The strike or lockout as a weapon has to be used sparingly for redressal of urgent and pressing grievances when no means are available or when available means have failed, to resolve it. It has to be resorted to, to compel the other party to the dispute to see the justness of the demand. It is not to be utilised to work hardship to the society at large so as to strengthen the bargaining power. It is for this reason that industrial legislation such as the Act places additional restrictions on strikes and lockouts in public utility services.

31. With the emergence of the organised labour, particularly in public undertakings and public utility services, the old balance of economic power between the management and the workmen has undergone a qualitative change in such undertakings. Today, the organised labour in these institutions has acquired even the power of holding the society at large to ransom, by withholding labour and thereby compelling the managements to give in on their demands whether reasonable or unreasonable. What is forgotten many times, is that as against the employment and the service conditions available to the organised labour in these undertakings, there are millions who are either unemployed, underemployed or employed on less than statutorily minimum remuneration. The employment that workmen get and the profits that the employers earn are both generated by the utilisation of the resources of the society in one form or the other whether it is land, water, electricity or money which flows either as share capital, loans from financial institutions or subsidies and exemptions from the Governments. The resources are to be used for the well-being of all by generating more employment and production and ensuring equitable distribution. They are not meant to be used for providing employment, better service conditions and profits only for some. In this task, both the capital and the labour are to act as the trustees of the said resources on behalf of the society and use them as such. They are not to be wasted or frittered away by strikes and lockouts. Every dispute between the employer and the employee has, therefore, to take into consideration the third dimension, viz., the interests of the society as a whole, particularly the interest of those who are deprived of their legitimate basic economic rights and are more unfortunate than those in employment and management. The justness or otherwise of the action of the employer or the employee has, therefore, to be examined also on the anvil of the interests of the society which such action tends to affect. This is true of the action in both public and private sector. But more imperatively so in the public sector. The management in the public sector is not the capitalist and the labour an exploited lot. Both are paid employees and owe their existence to the direct investment of public funds. Both are expected to represent public interests directly and have to promote them.

32. We are, therefore, more than satisfied that the High Court in the present case had erred in recording its findings on both the counts viz., the legality and justifiability, by assuming jurisdiction which was properly vested in the industrial adjudicator. The impugned order of the High Court has, therefore, to be set aside.

33. Hence we allow the appeal. Since the dispute has been pending since 1989, by exercising our power under Article 142 of the Constitution, we direct the Central Government to refer the dispute with regard to the deduction of wages for adjudication to the appropriate authority under the Act within eight weeks from today. The appeal is allowed accordingly with no order as to costs.

CA No. 2689 of 1989 and CA Nos. 2690-92 of 1989 **:**

34. In these two matters, arising out of a common judgment of the High Court, the question involved was materially different, viz., whether when the employees struck work only for some hours of the day, their salary for the whole day could be deducted. As in the case of ***T.S. Kelawala***, in this case also the question whether the strike was justified or not was not raised. No argument has also been advanced on behalf of the employees before us on the said issue. In the circumstances, the law laid down by this Court in ***T.S. Kelawala***, with which we concur, will be applicable. The wages of the employees for the whole day in question, i.e., 29-12-1977 are liable to be deducted. The appeals are, therefore, allowed and the impugned decision of the High Court is set aside. There will, however, be no order as to costs.

* * * * *

Essorpe Mills Ltd. **v.** *Presiding Officer, Labour Court*

(2008) 7 SCC 594

DR. ARIJIT PASAYAT, J. - Challenge in this appeal is to the order passed by a Division Bench of the Madras High Court dismissing the writ appeals filed by the appellant.

2. Background facts as projected by the appellant are as follows:

Respondents 2 to 23 went on illegal strike from 8-11-1990. Respondent 15 and one S.L. Sundaram who had died in the meantime were the first to strike work in the blow room resulting in the stoppage of entire operation of the appellant's textile mills. Other workmen followed. All the fifty-five workers who resorted to strike were suspended. Even after their suspension, Respondents 2 to 17 remained in the premises causing obstruction. All the fifty-five workers were charged for misconduct. Out of them thirty-four apologised and they were taken back into service. But subsequently, three more also apologised and they too were allowed to join duty. Respondents 2 to 23, however, did not relent.

3. On 14-3-1991 the General Secretary of the Tamil Nadu Panchalai Workers' Union served a strike notice on the management purportedly under Section 22(1) of the Industrial Disputes Act, 1947 ("the Act") stating that "strike would commence on or after 24-3-1991" and on 8th and 24th April and 13-5-1991. Respondents 2 to 23 were dismissed from service after holding a disciplinary enquiry. The petitions were filed under Section 2-A of the Act for reinstatement with back wages and continuity of service. The Labour Court by its award dated 24-1-1994 held that the strike was illegal. However, in purported exercise of powers under Section 11-A of the Act the Labour Court substituted the punishment of dismissal by order of discharge and awarded compensation of Rs 50,000 to each workman.

4. The award was challenged by the appellant as well as the workmen before the High Court. On 5-8-2000 a learned Single Judge of the High Court allowed Writ Petition No. 8389 of 1995 filed by Respondents 2 to 23 on the ground of non-compliance with Section 33(2)(*b*) of the Act and directed reinstatement of the workmen with full back wages and continuity of service. He took the view that a copy of the strike notice dated 14-3-1991 was sent to the Conciliation Officer and, therefore, conciliation proceedings were pending on the date of dismissal and since the dismissal was without the approval of the Conciliation Officer in terms of Section 33 of the Act the same was illegal. Reliance was placed on a decision of this Court in ***Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd.*** **v.** ***Ram Gopal Sharma*** [(2002) 2 SCC 244].

5. The appellant's Writ Petition No. 10239 of 1999 against the alteration of punishment was dismissed. On 30-12-2003 by the impugned judgment a Division Bench of the High Court dismissed the writ appeals holding that the judgment of this Court did not make any distinction between the proceeding pending before the Conciliation Officer and those pending before an Industrial Tribunal.

6. On 21-2-2004 the special leave petitions were filed and when the matter came up for hearing on 20-3-2006 after notice, a Bench of this Court suggested certain terms for amicable settlement as set out in the order of the said date. The appellant agreed to the terms proposed, but Respondents 2 to 23 did not agree.

7. The basic stand of the appellant is as follows:

The High Court failed to appreciate that in the absence of a valid notice of strike in terms of Section 22(1) there can be no commencement of conciliation proceedings in terms of Section 20(1) of the Act. Section 22(1) prohibits a strike in a public utility service, in breach of contract, without giving to the employer advance notice of six weeks. It prohibits strike (*a*) within the notice period of six weeks, (*b*) within fourteen days of giving such notice, (*c*) before the expiry of the date of strike specified in such a notice, (*d*) during the pendency of any conciliation proceedings before a Conciliation Officer and seven days after the conclusion of such proceedings. The strike notice issued on 14-3-1991 stating that the strike will commence on or after 24-3-1991 i.e. (just ten days' notice) does not satisfy the requirement of advance notice stipulated under Section 22(1). Therefore, it is not a valid notice. Consequently, in the eye of the law there was no commencement of conciliation proceedings as a result of the said notice.

8. On the dates of dismissal of workmen no conciliation proceeding was pending in the eye of the law. Unless a conciliation proceeding was pending at the time of dismissal of workmen, Section 33 will not be attracted and there is no question of seeking permission of the Conciliation Officer in such a case.

9. The High Court failed to appreciate that in terms of Section 33-A for not obtaining permission of the Conciliation Officer under Section 33, the only legal consequence provided is that the Conciliation Officer shall take the complaint of contravention of the provisions of Section 33 into account in mediating in and promoting the settlement of such industrial dispute. Therefore, the order of dismissal in any event was not illegal. There was no complaint made to the Conciliation Officer in this case.

10. The Conciliation Officer, unlike the Labour Court or an Industrial Tribunal, has no power of adjudication. Therefore, he cannot set aside the order of dismissal. The dismissal remains valid.

11. The stand of Respondents 2 to 23 on the other hand is that the appellant did not raise the plea that there was no conciliation proceeding pending at the time of dismissal of the workmen. It is stated that there was deemed conciliation. Before the learned Single Judge the primary issue revolved around the question as to whether any notice of conciliation had been issued by the Conciliation Officer and, therefore, there was pendency of conciliation proceeding. The learned Single Judge held against the appellant relying on a decision of this Court in ***Lokmat Newspapers (P) Ltd.*** **v.** ***Shankarprasad*** [(1999) 6 SCC 275] holding that once strike notice is issued under Section 22 of the Act, conciliation proceeding is deemed to have been commenced and no further notice from the Conciliation Officer is necessary.

12. The stand that the notice of strike does not meet the requirements of Section 22 of the Act is also not tenable. Section 22(1)(*d*) of the Act provides that no person employed in a public utility service shall go on strike in breach of contract during the pendency of any conciliation proceedings before the Conciliation Officer and seven days after the conclusion of the proceedings. The Conciliation Officer shall hold the conciliation proceedings when notice under Section 22 of the Act has been given.

13. Under Section 12(3) if a settlement is arrived at during conciliation proceedings, a report is to be sent by the Conciliation Officer to the Government together with the settlement. If no settlement is arrived at the Conciliation Officer has to send the failure report under Section 12(4) of the Act and the Government has to refer the dispute under Section 12(5). Unlike in the case of non-public utility service, the concept of deemed conciliation has been statutorily provided in the case of public utility service so that workmen did not go on strike during pendency of the conciliation proceedings. When a strike notice under Section 22 of the Act has been given the Conciliation Officer is mandatorily required to hold the conciliation proceedings under Section 20(1) of the Act.

14. The purpose of providing for deemed conciliation is to prevent dislocation of public utility service. The object of enacting clauses (*a*) and (*b*) of Section 22(1) is for the purpose of ensuring that workers do not rush into strike and give a chance to the Conciliation Officer to resolve the dispute.

15. It is therefore clear that there was a deemed conciliation proceeding when the notice under Section 22 in Form 'O' of the Tamil Nadu Industrial Disputes Rules, 1958 (in short "the Rules") has been issued. Several alternatives are provided in Section 22(1) and clauses (*a*) to (*d*) are the alternatives which is clear from the use of the expression "or". As such the time-limit set out in either one of clause (*a*) or (*b*) would therefore have to be read disjunctively which is clear from clause (*c*) which provides that strike shall not be undertaken "before the expiry of the date of strike specified in any such notice as aforesaid". It is further submitted that decision in ***Jaipur Zila*** *case* has full application.

16. A few facts which have relevance need to be noted. The notice was given about the proposed strike after the strike. Undisputedly, the workers resorted to strike on 8-11-1990. The notice was given on 14-3-1991. Different stages enumerated by Section 22(1) are as follows:

(*i*) advance notice of six weeks;

(*ii*) fourteen days given to the employer to consider the notice;

(*iii*) the workmen giving the notice cannot go on strike before the indicated date of strike;

(*iv*) pendency of any conciliation proceedings.

17. In this case no conciliation proceedings were pending under sub-section (4). Sub-section (4) of Section 22 states that the notice of strike referred to in sub-section (1) has to be given in such manner as may be prescribed. The Central Rule 71 prescribes the manner in which the notice has to be given and the notice is in Form 'L'. The notice as mandated under Section 22 has to be given to the employer.

18. Learned counsel for the respondent relied on Section 20 which deals with commencement and conclusion of proceedings. According to the High Court the conciliation proceeding is deemed to have been commenced on the date on which the notice of strike under Section 22 is received by the Conciliation Officer.

19. The High Court seems to have lost sight of the crucial words "notice of strike or lockout under Section 22". Section 22 presupposes a notice before the workmen resorted to strike. The notice has to be given to the employer. Sub-section (6) of Section 22 also has

relevance because within a particular time period after receipt of the notice under sub-section (1) he shall report to the appropriate Government or to such authority as the Government may prescribe.

20. The stand of the respondents is that simultaneously notice is required to be given to the Conciliation Officer in Form 'L' and, therefore, Section 20 has full application. This plea is clearly untenable because Form 'L' refers to Rule 71 and not Section 22. There is nothing in Section 22 which requires giving of intimation or copy of the notice under Section 22 to the Conciliation Officer. At the stage of notice under Section 22 there is no dispute.

21. The date of notice is 14-3-1991 and the proposed strike was on 24-3-1991. Therefore, on the face of it, it cannot be treated to be a notice as contemplated under Section 22(1)(*a*). The notice in question reads as follows:

"By Registered Post

The strike notice issued by the employees under Rule 59(1)

From:

The General Secretary,
Tamil Nadu Panchalal Workers' Union,
39, 11th Cross Road,
Tatabath,
Coimbatore 12

To:

The Management,
Essorpe Mills,
Saravanampatti (Post),
Coimbatore 35.

Sir,

We have decided to strike work at Essorpe Mills, Saravanampatti Post, Coimbatore. Therefore, we are giving advance notice of strike under the provisions of Section 22(1) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947). We would inform you as per Section 22(1)(*c*) that the strike will commence on or after 24-3-1991.

We have enclosed our demands under Rule 29 of the Chennai Industrial Disputes Rules, 1958.

Always in service to the nation

sd/-
K. Palanichamy
The General Secretary,
Tamil Nadu Panchalal Workers' Union

Copy to:

1. Commissioner of Labour, Chennai
2. Addl. Commissioner of Labour, Coimbatore

3. Deputy Commissioner of Labour, Coimbatore
4. Asstt. Commissioner of Labour (Conciliation-2), Coimbatore …….

22. In the notice it is stated that the strike will commence on or after 24-3-1991. Obviously, six weeks' time before the date of strike was not given. In this case the date of notice is 14-3-1991 and the proposed strike was on or after 24-3-1991. The inevitable conclusion is that the notice cannot be treated to be one under Section 22. *Jaipur Zila case* has no application if the notice given is not in accordance with law. If no notice is given to the employer, the effect of it is that he is not aware of the proceedings. Obviously, the conciliation proceedings must be one meeting the requirements of law. Here, no notice in terms of Section 22 of the Act was there.

23. Somewhat unacceptable plea has been taken by Respondents 2 to 23 that in terms of Section 22(1)(*b*) after fourteen days of giving the notice, the workmen can go on strike. If this plea is accepted six weeks' time stipulated in Section 22(1)(*a*) becomes redundant. The expression "giving such notice" as appearing in Section 22(1)(*b*) refers to the notice under Section 22(1)(*a*). Obviously, therefore, the workmen cannot go on strike within six weeks' notice in terms of Section 22(1)(*a*) and fourteen days thereafter in terms of Section 22(1)(*b*).

24. The expression "such notice" refers to six weeks' advance notice. Earlier illegal strike is not remedied by a subsequent strike as provided in Section 22. If such stand is accepted it will go against the requirement of Section 22 which aims at stalling action for illegal strike.

25. Above being the position, the judgments of the learned Single Judge as well as that of the Division Bench cannot be sustained and deserve to be set aside which we direct. Notwithstanding the same the fair approach indicated by the appellant by accepting the decision of this Court by order dated 20-3-2006 can be given effect to. It is open to Respondents 2 to 23 or any of them to comply with the terms indicated.

26. The appeal is allowed to the extent indicated above.

* * * * *

Punjab Land Development and Reclamation Corporation Ltd. **v.** *Presiding Officer, Labour Court*

(1990) 3 SCC 682

K.N. SAIKIA, J. - 13. Two rival contentions are raised by the parties. The learned counsel for the employers contend that the word 'retrenchment' as defined in Section 2(oo) of the Act means termination of service of a workman only by way of surplus labour for any reason whatsoever. The learned counsel representing the workmen contend that 'retrenchment' means termination of the service of a workman for any reason whatsoever, other than those expressly excluded by the definition in Section 2(oo) of the Act.

14. The precise question to be decided, therefore, is whether on a proper construction of the definition of "retrenchment" in Section 2(oo) of the Act, it means termination by the employer of the service of a workman as surplus labour for any reason whatsoever, or it means termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and those expressly excluded by the definition. In other words, the question to be decided is whether the word "retrenchment" in the definition has to be understood in its narrow, natural and contextual meaning or in its wider literal meaning.

15. Mr. N.B. Shetye, Mr. K.K. Venugopal, and the learned counsel adopting their arguments refer to the introduction of the provision of "retrenchment" in the Act. Retrenchment was not defined either in the repealed Trade Disputes Act, 1929, or in the Industrial Disputes Act, 1947, as originally enacted. Owing to a crisis in the textile industry in Bombay, apprehending large scale termination of services of workmen, the Government of India issued an Ordinance which later became the Industrial Disputes (Amendment) Act, 1953 which was deemed to have come into force on October 24, 1953. Besides introducing the definitions of "lay off" [clause 2(kkk)] and "Retrenchment" [clause 2(oo)] this Amendment Act of 1953 also inserted Chapter V-A in the Act which dealt with "lay off" and "Retrenchment". That chapter contained Sections 25-A to 25-J. Section 25-A provided that Sections 25-C to 25-E inclusive shall not apply to certain categories of industrial establishments. Section 25-C dealt with right of workmen laid off for compensation. Section 25-D provided for maintenance of muster rolls of workmen by employers and Section 25-E stated the cases in which the workmen were not entitled to lay off compensation. Section 25-F dealt with conditions precedent to retrenchment of workmen. Section 25-G dealt with procedure for retrenchment and Section 25-H dealt with reemployment of retrenched workmen; and Section 25-J dealing with the effect of laws inconsistent with this chapter said that the provisions of this chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law (including standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946); provided that nothing contained in this Act shall have effect to derogate from any right which a workman has under any award for the time being in operation or any contract with the employer.

16. The Statement of Objects and Reasons of the Amendment Act, 1953 was as under:

> The Industrial Disputes (Amendment) Bill, 1953 seeks to provide for payment of compensation to workmen in the event of their lay off or retrenchment. The provisions included in the Bill are not new and were discussed at various tripartite meetings. Those relating to lay-off are based on an agreement entered into between the representatives of employers and workers who attended the 13th session of the Standing Labour Committee. In regard to retrenchment, the Bill provides that a workman who has been in continuous employment for not less than one year under an employer shall not be retrenched until he has been given one month's notice in writing or one month's wages in lieu of such notice and also a gratuity calculated at 15 days' average pay for every completed year of service or any part thereof in excess of six months. A similar provision has included in the Labour Relations Bill, 1950, which has since lapsed. Though compensation on the lines provided for in the Bill is given by all progressive employers, it is felt that a common standard should be set for all employers.

19. In ***Pipraich Sugar Mills Ltd.*** **v.** ***Pipraich Sugar Mills Mazdoor Union*** [AIR 1957 SC 95], the appellant company could not work its mills to full capacity owing to short supply of sugarcane and got the permission of the government to sell its machinery but continued crushing cane under a lease from the purchaser. The workmen's union in order to frustrate the transaction resolved to go on strike and serving a strike notice did not cooperate with the management with the result that it lost heavily. On the expiry of the lease and closure of the industry, the services of the workmen were duly terminated by the company. The workmen claimed the share of profits on the basis of the offer earlier made by the company and accepted by the workers. The company having declined to pay and the dispute having been referred, the Industrial Tribunal held that the company was bound to pay and accordingly awarded a sum of Rs. 45,000 representing their share of the profits and the award was affirmed by the Labour Appellate Tribunal. Question before this Court in appeal was whether the termination of the workmen on the closure of the industry amounted to retrenchment. It was held that the award was not one for compensation for termination of the services of workmen on closure of the industry, as such discharge was different from the discharge on retrenchment, which implied the continuance of the industry and discharge only of the surplusage, and the workmen were not entitled either under the Law as it stood on the day of their discharge or even on merits to any compensation.

20. The contention of the workmen was that even before the enactment of Industrial Disputes (Amendment) Act, 1953, the tribunal had acted on the view that the retrenchment included discharge on closure of business and had awarded compensation on that footing and that the award of the tribunal in ***Pipraich*** case could be supported in that view and should not be disturbed. This was based on the decision in ***Employees*** **v.** ***India Reconstruction Corporation Ltd.*** [1953 LAC 563] and ***Bennett Coleman and Company Ltd.*** **v.** ***Employees*** [(1954) 1 LLJ 341 (LAT)]. But their Lordships did not agree. Venkatarama Ayyar, J. speaking for the four-Judge bench said:

> Though there is discharge of workmen both when there is retrenchment and closure of business, the compensation is to be awarded under the law, not for discharge as such but for discharge on retrenchment, and if, as is conceded, retrenchment means in

ordinary parlance, discharge of the surplus, it cannot include discharge on closure of business.

21. As a result it was held that the award in ***Pipraich*** was against the agreement and could not be supported as one of compensation to the workmen.

22. Thus this Court in ***Pipraich*** was dealing with the question whether the discharge of the workmen on closure of the undertaking would constitute retrenchment and whether the workmen were entitled on that account to retrenchment compensation; and it was observed that retrenchment connoted in its ordinary acceptation that the business itself was being continued but that a portion of the staff or the labour force was discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business could not, therefore, be properly described as retrenchment, which in the ordinary parlance meant discharge from the service and did not include discharge on closure of business.

23. Under an agreement dated August 1, 1895 between the Secretary of State for India in Council and the Railway Company, the Secretary of State could purchase and take over the undertaking after giving Railway Company a notice. On December 19, 1952 a notice was given to the Railway Company for and on behalf of the President of India that the undertaking of the Railway Company would be purchased and taken over as from January 1, 1954. On November 11, 1953, the Railway Company served a notice on its workmen intimating that as a result of the taking over, the services of all the workmen of the Railway Company would be terminated with effect from December 31, 1953. As a result of the closure, the services of all 450 workmen and 20 clerks were terminated and the appellant company claimed that the closure was bona fide being due to heavy losses sustained by the company. The principal respondent claimed retrenchment compensation for the workmen of the appellant under clause (b) of Section 25-F of the Act.

25. In both the appeals the question before the Constitution Bench was whether the claim of the erstwhile workmen both of the Railway Company and of Sri Dinesh Mills Ltd., to the compensation under clause (b) of Section 25-F of the Act was a valid claim in law. Observing that the Act had a 'plexus of amendments', and some of the recent amendments had been quite extensive in nature and that Section 25-F occurred in Chapter V-A of the Act which dealt with 'lay off and retrenchment' in the Amending Act, and analyzing Section 25-F as it then stood, S.K. Das, J. speaking for the Constitution Bench observed that in the first part of the section both the words 'retrenched' and 'retrenchment' were used and obviously they had the same meaning except that one was verb and the other was a noun and that to appreciate the true scope and effect of Section 25-F one must first understand what was meant by the expression 'retrenched' or 'retrenchment'.

26. Analysing the definition of 'retrenchment' in Section 2(oo) the court found in it the following four essential requirements: (a) termination of the service of a workman; (b) by the employer; (c) for any reason whatsoever; and (d) otherwise than as a punishment inflicted by way of disciplinary action. The court then said:

It must be conceded that the definition is in very wide terms. The question, however, before us is - does this definition merely give effect to the ordinary, accepted notion of retrenchment in an existing or running industry by embodying the notion in apt

> and readily intelligible words or does it go so far beyond the accepted notion of retrenchment as to include the termination of services of all workmen in an industry when the industry itself ceases to exist on a bona fide closure or discontinuance of his business by the employer?

The court further said:

> There is no doubt that when the Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the legislature; our task is to get at the intention as expressed in the statute. Therefore, we propose first to examine the language of the definition and see if the ordinary, accepted notion of retrenchment fits in, squarely and fairly, with the language used.

The court reiterated the following observations in ***Pipraich*****:** (SCR 886 quoted at SCR 131)

> But retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff of the labour force is discharged as surplusage and the termination of services of all the workmen as a result of the closure of the business cannot therefore be properly described as retrenchment.

This was the ordinary accepted notion of 'retrenchment' in an industry before addition of Section 2(oo) to the Act, as retrenchment in that case took place in 1951. Replying to the argument that by excluding the bona fide closure of business as one of the reasons for termination of the service of workmen by the employer, one would be cutting down the amplitude of the expression 'for any reason whatsoever' and reading into the definition the words which did not occur there, the court agreed that the adoption of the ordinary meaning would give to the expression 'for any reason whatsoever' a somewhat narrower scope; one might say that it would get a colour in the context in which expression occurred; but the court did not agree that it amounted to importing new words in the definition and said that the legislature in using that expression said in effect: "It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment". In the absence of any compelling words to indicate that the intention was to include bona fide closure of the whole business, it would be divorcing the expression altogether from its context to give it such a wide meaning as was contended. About the nature of the definition it was said:

> It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended. Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined.

27. The court in ***Hariprasad*** dealt with two other contentions; one was that before the Amending Act of 1953 the retrenchment had acquired a special meaning which included the payment of compensation on a closure of business and the legislature gave effect to that

meaning in the definition clause and by inserting Section 25-F. The second was that Section 25-FF inserted in 1956 by Act 41 of 1956 was 'Parliamentary exposition' of the meaning of the definition clause and of Section 25-F. Rejecting the contentions the court held that retrenchment meant the discharge of surplus workmen in an existing or continuing business; it had acquired no special meaning so as to include discharge of workmen on bona fide closure of business, though a number of Labour Appellate Tribunals awarded compensation to workmen on closure of business as an equitable relief for variety of reasons. The court accordingly held:

> (T)hat retrenchment as defined in Section 2(oo) and as used in Section 25 has no wider meaning than the ordinary, accepted connotation of the word: it means the *discharge of surplus labour or staff* by the employer for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on real and bona fide closure of business as in the case of Sri Dinesh Mills Ltd. Or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer in circumstances like those of the Railway Company.(emphasis in original)

28. It is interesting to note that the Amending Act 41 of 1956 inserted original Section 25-FF on September 4, 1956. The Objects and Reasons were stated thus:

> Doubt has been raised whether retrenchment compensation under the Industrial Disputes Act, 1947 becomes payable by reason merely of the fact that there has been a change of employers, even if the service of the workman is continued without interruption and the terms and conditions of his service remain unaltered. This has created difficulty in the transfer, reconstitution and amalgamation of companies and it is proposed to make the intention clearly by amending Section 25-F of the Act.

Hariprasad case was decided on November 27, 1956. The Industrial Disputes (Amendment) Ordinance, 1957 (4 of 1957) was promulgated immediately thereafter with effect from December 1, 1956 and that Ordinance was replaced by the Industrial Disputes (Amendment) Act, 1957 (18 of 1957). The following was the Statement of Objects and Reasons:

> In a judgment delivered on November 27, 1956, the Supreme Court held that no retrenchment compensation was payable under Section 25-F of the Industrial Disputes Act, 1947, to workmen whose services were terminated by an employer on a real and bona fide closure of business, or when termination occurred as a result of transfer of ownership from one employer to another (see AIR 1957 SC 1210). This has led and is likely to lead to a large number of workmen being rendered unemployed without any compensation. In order to meet this situation which was causing hardship to workmen, it was considered necessary to take immediate action and the Industrial Disputes (Amendment) Ordinance, 1957 (4 of 1957), was promulgated with retrospective effect from December 1, 1956.
>
> This Ordinance was replaced by an Act of Parliament enacting the provisions contained in Section 25-FF and 25-FFF. These sections provide that 'compensation

would be payable to workmen whose services are terminated on account of the transfer or closure of undertakings'. In the case of transfer of undertakings, however, if the workman is re-employed on terms and conditions which are not less favourable to him, he will not be entitled to any compensation. This was the position which existed prior to the decision of the Supreme Court. In the case of closure of business on account of the circumstances beyond the control of the employer, the maximum compensation payable to workmen has been limited to his average pay for three months. If the undertaking is engaged in any construction work and it is closed down within two years on account of the completion of its work, no compensation would be payable to workmen employed therein.

Hariprasad having accepted the ordinary contextual meaning of retrenchment, namely, termination of surplus labour as the major premise it was surely open to the Parliament to have amended the definition of retrenchment in Section 2(oo) of the Act. Instead of doing that the Parliament added Sections 25-FF and 25-FFF.

Thus, by this Amendment Act the Parliament clearly provided that though such termination may not have been retrenchment technically so-called, as decided by this Court, nevertheless the employees in question whose services were terminated by the transfer or closure of the undertaking would be entitled to compensation, as if the said termination was retrenchment. As it has been observed, the words "as if" brought out the legal distinction between retrenchment defined by Section 2(oo) as it was interpreted by this Court and termination of services consequent upon transfer of the undertaking. In other words, the provision was that though termination of services on transfer or closure of the undertaking may not be retrenchment, the workmen concerned were entitled to compensation as if the said termination was retrenchment.

29. Thus we find that till then the accepted meaning of retrenchment was ordinary, contextual and narrower meaning of termination of surplus labour for any reason whatsoever.

30. In ***Anakapalle Co-operative Agricultural and Industrial Society Ltd.*** **v.** ***Workmen*** [AIR 1963 SC 1489], a company running a sugar mill was suffering losses every year due to insufficient supply of sugarcane and wanted to shift the mill. The cane growers formed a co-operative society and purchased the mill. As agreed between the company and the society, the company terminated the services of the employees and paid retrenchment compensation to them under Section 25-FF of the Act. The society employed some of the old employees and refused to absorb some of them who raised an industrial dispute. The Industrial Tribunal having directed the purchaser-society by its award to re-employ them, the society contended that it was not a successor-in-interest of the company and hence the claim of re-employment was not sustainable and the services of the employees having been terminated upon payment of compensation by the company under Section 25-FF no claim could be made against the transferee society. This Court held that the society was the successor-in-interest of the company as it carried on the same or similar business as was carried by the vendor-company at the same place and without substantial break in continuity. It was further held that the employees were not entitled to both compensation for termination of service and immediate re-employment at the hands of the transferee and Section 25-H was not applicable to the case as the termination of service upon transfer or closure was not retrenchment properly so called

and that termination of service dealt with in Section 25-FF could not be equated with retrenchment covered by Section 25-F. It was observed that the words 'as if' in Section 25-FF clearly distinguished retrenchment under Section 2(oo) and termination under Section 25-FF.

32. In ***Delhi Cloth and General Mills Ltd.*** **v.** ***Shambhu Nath Mukherjee*** [(1977) 4 SCC 415], where the post of motion setter was abolished and the respondent was given a job of a trainee on probation for the post of Assistant Line Fixer and the management found him unsuitable for the job even after extending his probation period up to nine months and offered him the post of fitter on the same pay and the respondent instead of accepting the offer wanted to be given another chance to show his efficiency in his job and the management struck off his name from the rolls without complying with the provisions of Section 25-F(a) and (b) of the Act and the Labour Court having given award in the respondent's favour and the appellant's writ petition was rejected by the High Court, Goswami, J. speaking for three Judges bench said: (SCC p. 420, para 14)

> Striking off the name of the workman from the rolls by the management is termination of his service. Such termination of service is retrenchment within the meaning of Section 2(oo) of the Act. There is nothing to show that the provisions of Section 25-F(a) and (b) were complied with by the management in this case. The provisions of Section 25-F(a), the proviso apart, and (b) are mandatory and any order of retrenchment, in violation of these two peremptory conditions precedent, is invalid.

The appeal was accordingly dismissed. The earlier decisions were not referred to.

33. Next comes the decision in ***State Bank of India*** **v.** ***N. Sundara Money*** [(1976) 1 SCC 822] (Y.V. Chandrachud, V.R. Krishna Iyer and A.C. Gupta, JJ.). In an application under Article 226, the respondent on automatic extinguishment of his service consequent to the pre-emptive provision as to the temporariness of the period of his employment in his appointment letter claiming to have been deemed to have had continuous service for one year within the meaning of Section 25(B)(2) of the Act, the Single Judge of the High Court having allowed his writ petition and the writ appeal of the appellant having also failed, this Court in appeal found as fact that the appointment was purely temporary one for a period of 9 days but might be terminated earlier, without assigning any reason therefore at the petitioner's discretion; and the employment unless terminated earlier, would automatically cease at the expiry of the period i.e. November 18, 1972. This 9 days' employment added on to what had gone before ripened to a continuous service for a year "on the antecedent arithmetic of 240 days of broken bits of service" and considering the meaning of 'retrenchment' it was held that the expression for any reason whatsoever was very wide and almost admitting of no exception. The contention of the employer was that when the order of appointment carried an automatic cessation of service, the period of employment worked itself out by efflux of time, not by act of employer and such cases were outside the concept of retrenchment. This Court observed that to retrench is to cut down and one could not retrench without trenching or cutting, but "dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation".

34. Accepting the literal meaning, Krishna Iyer, J. observed:

> A breakdown of Section 2(oo) unmistakably expands the semantics of retrenchment. 'Termination… for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is, has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master or the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of Section 25-F and Section 2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer *terra incognita* but area covered by an expansive definition. It means 'to end, conclude, cease'. In the present case the employment ceased, concluded, ended on the expiration of nine days – automatically may be, but cessation all the same. That to write into the order of appointment the date of termination confers no *moksha* from Section 25-F(b) is inferable from the proviso to Section 25-F(1) [sic 25-F(a)]. True, the section speaks of retrenchment from Section 25-F(b) is inferable from the proviso to Section 25-F(1) [sic 25-F(a)]. True, the section speaks of retrenchment *by the employer* and it is urged that some act of volition by the employer to bring about the termination is essential to attract Section 25-F and automatic extinguishment of service by effluxion of time cannot be sufficient. (emphasis in original)

36. The precedents including ***Hariprasad*** do not appear to have been brought to the notice of their Lordships in this case. It may be noted that since ***Delhi Cloth and General Mills*** a change in interpretation of retrenchment in Section 2(oo) of the Act is clearly discernible.

37. Mr. Venugopal would submit that the judgment in ***Sundara Money*** case and for that matter the subsequent decisions in the line are *per incuriam* for two reasons: (i) that they failed to apply the law laid down by the Constitution Bench of this Hon'ble Court in ***Hariprasad Shukla*** case and (ii) for the reason that they have ignored the impact of two of the provisions introduced by the Amendment Act of 1953 along with the definition of "retrenchment" in Section 2(oo) and Section 25-F namely, Sections 25-G and 25-H. We agree with the learned counsel that the question of the subsequent decisions being *per incuriam* could arise only if the ratio of ***Sundara Money*** case and the subsequent judgments in the line was in conflict with the ratio in the ***Hariprasad Shukla*** case and ***Anakapalle*** case. The issue, it is urged, was, whether it was necessary for the court to interpret Section 2(oo) as being restricted to termination of services of workmen rendered surplus for arriving at a decision in the case and if it was unnecessary to so interpret Section 2(oo) for the purpose of arriving at a decision in that case, the interpretation of Section 2(oo) would necessarily be rendered obiter. According to counsel, the long discussion on interpretation of Section 2(oo) could not be brushed aside as either obiter or mere casual observations of the Constitution Bench.

40. We now deal with the question of *per incuriam* by reason of allegedly not following the Constitution Bench decisions. The Latin expression *per incuriam* means through

inadvertence. A decision can be said generally to be given *per incuriam* when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court. It cannot be doubted that Article 141 embodies, as a rule of law, the doctrine of precedents on which our judicial system is based. In ***Bengal Immunity Company Ltd.* v. *State of Bihar*** [AIR 1955 SC 66], it was held that the words of Article 141, "binding on all courts within the territory of India", though wide enough to include the Supreme Court, do not include the Supreme Court itself, and it is not bound by its own judgments but is free to reconsider them in appropriate cases. This is necessary for proper development of law and justice.

43. As regards the judgments of the Supreme Court allegedly rendered in ignorance of a relevant constitutional provision or other statutory provisions on the subjects covered by them, it is true that the Supreme Court may not be said to "declare the law" on those subjects if the relevant provisions were not really present to its mind. But in this cases Sections 25-G and 25-H were not directly attracted and even if they could be said to have been attracted in laying down the major premise, they were to be interpreted consistently with the subject or context. The problem of judgment *per incuriam* when actually arises, should present no difficulty as this Court can lay down the law afresh, if two or more of its earlier judgments cannot stand together. The question however is whether in this case there is in fact a judgment *per incuriam*. This raises the question of *ratio decidendi* in ***Hariprasad*** and ***Anakapalle*** cases on the one hand and the subsequent decisions taking the contrary view on the other.

48. Analysing the complex syllogism of ***Hariprasad*** case we find that its major premise was that retrenchment meant termination of surplus labour of an existing industry and the minor premise was, that the termination in that case was of all the workmen on closure of business on change of ownership. The decision was that there was no retrenchment. In this context it is important to note that subsequent benches of this Court thought to be the *ratio decidendi* of ***Hariprasad***, and that matter of ***Anakapalle*.**

49. In ***Santosh Gupta* v. *State Bank of Patiala*** [(1980) 3 SCC 340],O. Chinnappa Reddy, J. sitting with Krishna Iyer, J. deduced the *ratio decidendi* of ***Hariprasad*** thus:

> In ***Hariprasad Shivshankar Shukla* v. *A.D. Divikar***, the Supreme Court took the view that the word 'retrenchment' as defined in Section 2(oo) did not include termination of services of all workmen on a bona fide closure of an industry or on change of ownership or management of the industry. In order to provide for the situations which the Supreme Court held were not covered by the definition of the expression 'retrenchment', the Parliament added Section 25-FF and Section 25-FFF providing for the payment of compensation to the workmen in case of transfer of undertakings and in case of closure of undertakings respectively.

50. In ***Hariprasad*** the learned Judges themselves formulated the question before them as follows: (SCR p. 130)

> The question, however, before us is - does this definition merely give effect to the ordinary, accepted notion of retrenchment in an existing or running industry by embodying the notion in apt and readily intelligible words or does it go so far beyond the accepted notion of retrenchment as to include the termination of services of all

> workmen in an industry when the industry itself ceases to exist on a bona fide closure or discontinuance of his business by the employer?

51. The question was answered by the learned Judges in the following words:

> In the absence of any compelling words to indicate that the intention was even to include a bona fide closure of the whole business, it would, we think, be divorcing the expression altogether from the context to give it such a wide meaning as it contended for by learned counsel for the respondents… it would be against the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen by the employer when the business itself ceases to exist.

Rejecting the submission of Dr. Anand Prakash that "termination of service for any reason whatsoever" meant no more and no less than discharge of a labour force which was a surplusage, it was observed in ***Santosh Gupta*** that the misunderstanding of the observations and the resulting confusion stem from not appreciating the lead question which was posed and answered by the learned Judges and that the reference to 'discharge on account of surplusage' was illustrative and not exhaustive on account of transfer or closure of business.

52. Mr. V.A. Bobde submits, and we think rightly, that the sole reason for the decision in ***Hariprasad*** was that the Act postulated the existence and continuance of an industry and where the industry i.e. the undertaking, itself was closed down or transferred, the very substratum disappeared and the Act could not regulate industrial employment in the absence of an industry. The true position in that case was that Section 2(oo) and Section 25-F could not be invoked since the undertaking itself ceased to exist. The ratio of ***Hariprasad***, according to the learned counsel, is discernible from the discussion at pp. 131-32 of the report about the ordinary accepted notion of retrenchment 'in an industry' and ***Pipraich*** case was referred to for the proposition that continuance of the business was essential; the emphasis was not on the discharge of surplus labour but on the fact that "retrenchment connotes in its ordinary acceptation that the business itself is being continued… the termination of services of all the workmen as a result of the closure of the business cannot therefore be properly described as retrenchment". At page 134 in the last four lines also it was said: "But the fundamental question at issue is, does the definition clause cover cases of closure of business, when the closure is real and bona fide?" The reasons for arriving at the conclusion are given as (SCR p. 134) "it would be against the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition termination of service of all workmen by the employer when the business itself ceases to exist" and that the industrial dispute to which the provisions of the Act applies is only one which arises out of an existing industry. Thus, the court was neither called upon to decide nor did it decide whether in a continuing business, retrenchment was confined only to discharge of surplus staff and reference to discharge of surplusage was for the purpose of contrasting the situation in that case, i.e. workmen were being retrenched because of cessation of business and those observations did not constitute reasons for the decision. What was decided was that if there was no continuing industry the provision could not apply. In fact the question whether retrenchment did or did not include other terminations was never required to be decided in

Hariprasad and could not, therefore have been, or be taken to have been decided by this Court.

We agree with Mr. Bobde when he submits that ***Hariprasad*** case is not an authority for the proposition that Section 2(oo) only covers cases of discharge of surplus labour and staff. The judgments in ***Sundara Money*** and the subsequent decisions in the line could not be held to be *per incuriam* inasmuch as in ***Hindustan Steel*** and ***Santosh Gupta*** cases, the Division Benches of this Court had referred to ***Hariprasad*** case and rightly held that its ratio did not extend beyond a case of termination on the ground of closure and as such it would not be correct to say that the subsequent decisions ignored a binding precedent.

54. In ***Hindustan Steel Ltd.*** **v.** ***Presiding Officer, Labour Court***, [(1976) 4 SCC 222], the question was whether termination of service by efflux of time was termination of service within the definition of retrenchment in Section 2(oo) of the Act. Both the earlier decisions of the Court in ***Hariprasad*** and ***Sundara Money*** were considered and it was held that there was nothing in ***Hariprasad*** which was inconsistent with the decision in ***Sundara Money*** case. It was observed that the decision in ***Hariprasad*** was only that the words "for any reason whatsoever" used in the definition of retrenchment would not include a bona fide closure of the whole business because it would affect the entire scheme of the Act. The decisions in which contrary view was taken, were over-ruled in ***Santosh Gupta*** holding that the discharge of the workman on the ground that she did not pass the test which would have enabled her to be confirmed was 'retrenchment' within the meaning of Section 2(oo) and therefore, the requirement of Section 25-F had to be complied with. The workman was employed in the State Bank of Patiala from July 13, 1973 till August 1974 when her services were terminated. According to the workman she had worked for 240 days in the year preceding August 21, 1974 and the termination of her services was retrenchment as it did not fall within any of the three accepted cases. The management's contention was that termination was not due to discharge of surplus labour but due to failure of the workman to pass the test which could have enabled her to be confirmed in the service and as such it was not retrenchment. This contention was repelled.

55. Both Mr. Shetye and Mr. Venugopal submit that judicial discipline required the smaller benches to follow the decisions in the larger benches. This reminds us of the words of Lord Hailsham of Marylebone, the Lord Chancellor, "in the hierarchical system of courts which exists in this country, it is necessary for each lower tier… to accept loyally the decisions of the higher tiers". However, in view of the *ratio decidendi* of ***Hariprasad*****,** as we have seen, there is no room for such a criticism.

56. In ***Karnataka SRTC*** **v.** ***M. Boraiah*** [(1984) 1 SCC 244], a Division Bench of A.N. Sen and Ranganath Misra, JJ. held that in the above series of cases that have come later, the Constitution Bench decision in ***Hariprasad*** has been examined and the ratio indicated therein has been confined to its own facts and the view indicated by the court in that case did not meet with the approval of Parliament and, therefore, the law had been subsequently amended.

57. Speaking for the court, R.N. Misra, J. significantly said:

> We are inclined to hold that the stage has come when the view indicated in ***Money*** case has been 'absorbed into the consensus' and there is no scope for putting the clock back or for an anti-clockwise operation.

58. More than a month thereafter in ***Gammon India Ltd.*** **v.** ***Niranjan Das***, a three Judges bench (D.A. Desai, R.B. Misra and Ranganath Misra, JJ.) construing the one month's notice of termination in that case due to reduction of volume of business of the company said:

> On a true construction of the notice, it would appear that the respondent had become surplus on account of reduction in volume of work and that constitutes retrenchment *even in the traditional sense of the term* as interpreted in ***Pipraich Sugar Mills Ltd.*** **v.** ***Pipraich Sugar Mills Mazdoor Union***, though that view does not hold the field in view of the recent decisions of this Court in ***State Bank of India*** **v.** ***N. Sundara Money; Hindustan Steel Ltd.*** **v.** ***Presiding Officer, Labour Court, Orisss; Santosh Gupta*** **v.** ***State Bank of Patiala; Delhi Cloth and General Mills Ltd.*** **v.** ***Shambhu Nath Mukherjee; Mohan Lal*** **v.** ***Bharat Electronics Ltd.*** **and** ***L. Robert D'Souza*** **v.** ***Executive Engineer, Southern Railway***. The recitals and averments in the notice leave no room for doubt that the service of the respondent was terminated for the reason that on account of recession and reduction in the volume of work of the company, respondent has become surplus. Even apart from this, the termination of service for the reasons mentioned in the notice is not covered by any of the clauses (a), (b) and (c) of Section 2(oo) which defines retrenchment and it is by now well settled that where the termination of service does not fall within any of the excluded categories, the termination would be *ipso facto* retrenchment. It was not even attempted to be urged that the case of the respondent would fall in any of the excluded categories. It is therefore indisputably a case of retrenchment.

59. In a fast developing branch of Industrial and Labour Law it may not always be of particular importance to rigidly adhere to a precedent, and a precedent may need be departed from if the basis of legislation changes.

61. When we analyse the mental process in drafting the definition of "retrenchment" in Section 2(oo) of the Act we find that firstly it is to mean the termination by the employer of the service of a workman for any reason whatsoever. Having said so the Parliament proceeded to limit it by excluding certain types of termination, namely, termination as a punishment inflicted by way of disciplinary action. The other types of termination excluded were (a) voluntary retirement; or (b) retrenchment of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation on that behalf; or (c) termination of service of a workman on the ground of continued ill health. Had the Parliament envisaged only the question of termination of surplus labour alone in mind, there would arise no question of excluding (a), (b) and (c) above. The same mental process was evident when Section 2(oo) was amended inserting another exclusion clause (bb) by the Amending Act of 49 of 1984, with effect from August 18, 1984, "termination of the service of workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry of such contract being terminated under a stipulation in that behalf contained therein".

62. This is literal interpretation as distinguished from contextual interpretation said Tindal, C.J. in ***Sussex Peerage*** case:

> The only rule of construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.

68. In the case before us the difficulty was created by defining 'retrenchment' to mean something wider than what it naturally and ordinarily meant. While naturally and ordinarily it meant discharge of surplus labour, the defined meaning was termination of service of a workman for any reason whatsoever except those excluded in the definition itself. Such a definition creates complexity as the draftsman himself in drafting the other sections using the defined word may slip into the ordinary meaning instead of the defined meaning.

71. Analysing the definition of retrenchment in Section 2(oo) we find that termination by the employer of the service of a workman would not otherwise have covered the cases excluded in (a) and (b), namely, voluntary retirement and retirement on reaching the stipulated age of retirement. There would be no volitional element of the employer. Their express exclusion implies that those would otherwise have been included. Again if those cases were to be included, termination on abandonment of service, or on efflux of time, and on failure to qualify, although only consequential or resultant, would be included as those have not been excluded. Thus, there appears to be a gap between the first part and the exclusion part. Mr. Venugopal, on this basis, points out that cases of voluntary retirement, superannuation and tenure appointment are not cases of termination 'by the employer' and would, therefore, in any event, be outside the scope of the main provisions and are not really provisions.

72. The definition has used the word 'means'. When a statute says that a word or phrase shall "mean" – not merely that it shall "include" – certain things or acts, "the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition" [per Esher, M.R., ***Gough* v. *Gough***]. A definition is an explicit statement of the full connotation of a term.

73. Mr. Venugopal submits that the definition clause cannot be interpreted in isolation and the scope of the exception to the main provision would also have to be looked into and when so interpreted, it is obvious that a restrictive meaning has to be given to Section 2(oo).

74. It is also pointed out that Section 25-G deals with the principle of 'last come, first go', a principle which existed prior to the Amendment Act of 1953 only in relation to termination of workmen rendered surplus for any reasons whatsoever. Besides, it is submitted, by its very nature the wide definition of retrenchment would be wholly inapplicable to termination simpliciter. The question of picking out a junior in the same category for being sent out in place of a person whose services are being terminated *simpliciter* or otherwise on the ground that the management does not want to continue his contract of employment would not arise. Similarly, it is pointed out that starting from ***Sundara Money*** where termination *simpliciter* of a workman for not having passed a test, or for not having satisfactorily completed his

probation would not attract Section 25-G, as the very question of picking out a junior in the same capacity for being sent out instead of the person who failed to pass a test or failed to satisfactorily complete his probation could never arise. If, however, Section 25-G were to be followed in such cases, the section would itself be rendered unconstitutional and violative of fundamental rights of the workmen under Articles 14, 19(1)(g) and 21 of the Constitution. It would be no defence to this argument to say that the management could record reasons as to why it is not sending out the juniormost in such cases since in no single case of termination *simpliciter* would Section 25-G be applicable and in every such case of termination *simpliciter,* without exception, reasons would have to be recorded. Similarly, it is submitted, Section 25-H which deals with re-employment of retrenched workmen, can also have no application whatsoever, to a case of termination *simpliciter* because of the fact that the employee whose services have been terminated, would have been holding a post which '*eo instanti*' would become vacant as a result of the termination of his services and under Section 25-H he would have a right to be reinstated against the very post from which his services have been terminated, rendering the provision itself an absurdity. It is urged that Section 25-F is only procedural in character along with Sections 25-G and 25-H and do not prohibit the substantive right of termination but on the other hand requires that in effecting termination of employment, notice would be given and payment of money would be made and the later procedure under Sections 25-G and 25-H would follow.

75. Mr. Bobde refutes the above argument saying that Sections 25-F, 25-G and 25-H relate to retrenchment but their contents are different. Whereas Section 25-F provides for the conditions precedent for effecting a valid retrenchment, Section 25-G only provides the procedure for doing so. Section 25-H operates after a valid retrenchment and provides for re-employment in the circumstances stated therein. According to counsel, the argument is misconceived firstly for the reasons that Section 2 itself says that retrenchment will be understood as defined in Section 2(oo) unless there is anything repugnant in the subject or context; secondly Section 25-F clearly applies to retrenchment as plainly defined by Section 2(oo); thirdly Section 25-G does not incorporate in absolute terms – the principle of 'last come, first go' and provides that ordinarily last employee is to be retrenched, and fourthly Section 25-H upon its true construction should be held to be applicable when the retrenchment has occurred on the ground of the workman becoming surplus to the establishment and he has been retrenched under Sections 25-F and 25-G on the principle 'last come, first go'.Only then should he be given an opportunity to offer himself for re-employment. In substance it is submitted that there is no conflict between the definition of Section 2(oo) and the provisions of Sections 25F, 25G and 25H. We find that though there are apparent incongruities in the provisions, there is room for harmonious construction.

76. For the purpose of harmonious construction, it can be seen that the definitions contained in Section 2 are subject to there being anything repugnant in the subject or context. In view of this, it is clear that the extended meaning given to the term 'retrenchment' under clause (oo) of Section 2 is also subject to the context and the subject matter. Section 25-F prescribes the condition precedent to a valid retrenchment of workers as discussed earlier. Very briefly, the conditions prescribed are that giving of one month's notice indicating the reasons for retrenchment and payment of wages for the period of the notice. Section 25-FF

provides for compensation to workmen in case of transfer of undertakings. Very briefly, it provides that every workman who has been in continuous service for not less than one year in an undertaking immediately before such closure shall, subject to the provisions of sub-section (2), be entitled to notice and compensation in accordance with the provisions of Section 25-F, *as if the workman had been retrenched"*. Section 25-H provides for re-employment of retrenched workmen. In brief, it provides that where any workmen are retrenched, and the employer proposes to take into his employment any person, he shall give an opportunity to the retrenched workmen to offer themselves for re-employment as provided in the section subject to the conditions as set out in the section. In our view, the principle of harmonious construction implies that in a case where there is a genuine transfer of an undertaking or genuine closure of an undertaking as contemplated in the aforesaid sections, it would be inconsistent to read into the provisions a right given to workman "deemed to be retrenched" a right to claim re-employment as provided in Section 25-H. In such cases, as specifically provided in the relevant sections the workmen concerned would only be entitled to notice and compensation in accordance with Section 25-F. It is significant that in a case of transfer of an undertaking or closure of an undertaking in accordance with the aforesaid provisions, the benefit specifically given to the workmen is "as if the workmen had been retrenched" and this benefit is restricted to notice and compensation in accordance with the provisions of Section 25-F.

77. The last submission is that if retrenchment is understood in its wider sense what would happen to the rights of the employer under the Standing Orders and under the contracts of employment in respect of the workman whose service has been terminated. There may be two answers to this question. Firstly, those rights may have been affected by introduction of Sections 2(oo), 25-F and the other relevant sections. Secondly, it may be said, the rights as such are not affected or taken away, but only an additional social obligation has been imposed on the employer so as to give the retrenchment benefit to the affected workmen, perhaps for immediate tiding over of the financial difficulty. Looked at from this angle, there is implicit a social policy. As the maxim goes – *Stat pro ratione voluntas populi*; the will of the people stands in place of a reason.

80. The definitions in Section 2 of the Act are to be taken 'unless there is anything repugnant in the subject or context'. The contextual interpretation has not been ruled out. In ***R.B.I.* v. *Peerless General Finance and Investment Co. Ltd***:

> Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each

> phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the court construed the expression 'Prize Chit' in ***Srinivasa*** [***Srinivasa Enterprises*** **v.** ***Union of India*** (1980) 4 SCC 507] and we find no reason to depart from the court's construction.

81. As we have mentioned, industrial and labour legislation involves social and labour policy. Often they are passed in conformity with the resolutions of the International Labour Organisation. In ***Duport Steels*** **v.** ***Sirs*** [(1980) 1 All ER 529], the House of Lords observed that there was a difference between applying the law and making it, and that judges ought to avoid becoming involved in controversial social issues, since this might affect their reputation in impartiality. Lord Diplock said:

> A statute passed to remedy what is perceived by Parliament to be a defect in the existing law may in actual operation turn out to have injurious consequences that Parliament did not anticipate at the time the statute was passed; if it had, it would have made some provision in the Act in order to prevent them… But if this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Acts…

82. Applying the above reasoning, principles and precedents, to the definition in Section 2(oo) of the Act, we hold that "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section.

* * * * *

State of Rajasthan **v.** *Rameshwar Lal Gahlot*

AIR 1996 SC 1001

K. RAMASWAMY AND B.L. HANSARIA, JJ. - 3. The undisputed facts are that respondent was appointed for a period of three months or till the regularly selected candidate assumes office. He was appointed on January 28, 1988 and his appointment came to be terminated on November 19, 1988. When the writ petition was filed, the learned single Judge held that since he had completed more than 240 days, the termination is in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short, 'the Act') and directed to make fresh appointment of the respondent. When appeal was filed against the latter part of the order, the Division Bench set aside the latter part of the order and directed reinstatement with back wages. As against the order altered by the Division Bench, the present appeal came to be filed.

4. The controversy now stands concluded by a judgment of this Court reported in ***M. Venugopal* v. *Divisional Manager, LIC*** [(1994) 2 SCC 323]. Therein this Court had held that once an appointment is for a fixed period, Section 25-F does not apply as it is covered by clause (bb) of Section 2(oo) of the Act. It is contended for the respondent that since the order of the learned single Judge was not challenged, the termination became final. Consequently, the appellant would be liable to pay back wages on reinstatement. In our considered view, the opinion expressed by learned single Judge as well as Division-Bench is incorrect in law. When the appointment is for a fixed period, unless there is finding that power under clause (bb) of Section 2(oo) was misused or vitiated by its *mala fide* exercise, it cannot be held that the termination is illegal. In its absence, the employer could terminate the services in terms of the letter of appointment unless it is a colourable exercise of power. It must be established in each case that the power was misused by the management or the appointment for a fixed period was a colourable exercise of power. Unfortunately, neither the learned single Judge nor the Division Bench recorded any finding in this behalf. Therefore, where the termination is in terms of letter of appointment saved by clause (bb) neither reinstatement nor fresh appointment could be made. Since the appellant has not filed any appeal against the order of the learned single Judge and respondent came to be appointed afresh on June 27, 1992, he would continue in service, till the regular incumbent assumes office as originally ordered.

5. The question then is whether the respondent is entitled to payment of back wages. Since the order is found to be in terms of letter of appointment, respondent is not entitled to back wages. The Division Bench was incorrect in directing payment of back wages.

6. The appeal is allowed to the extent indicated above.

* * * * *

Uptron India Limited **v.** *Shammi Bhan*

AIR 1998 SC 1681

S. SAGHIR AHMAD, J. – Respondent 1 was appointed as an Operator (Trainee) on 13.5.1980 in the petitioner's establishment. On completion of training, she was absorbed on that post with effect from 13.7.1981 and was confirmed on 13.7.1982. She thus acquired the status of a permanent employee.

2. With effect from 7th of November, 1984, respondent 1 proceeded, and remained till 29th January, 1985, on maternity leave. Thereafter, she allegedly remained absent with effect from 31.1.1985 to 12.4.1985 without any application for leave and consequently, by order dated 12th April, 1985, the petitioner informed respondent 1 that her services stood automatically terminated in terms of Clause (17)(g) of the Certified Standing Orders. Respondent 1 raised an Industrial Dispute and made a prayer to the State Government in 1985 that her case may be referred to the Industrial Tribunal for adjudication. Her application, filed before the Deputy Labour Commissioner, Lucknow was registered as C.B. Case No. 310-1985. The State Government by its order dated 18.7.1990, referred the following questions for adjudication to the Industrial Tribunal, Lucknow:

> Whether the termination of the services of female Smt. Shammi Bhan, Operator, daughter of C.N. Kaul, by the management by its letter dated 12.4.1985 is proper and legal. If not, the relief which the employee will be entitled to?

3. The Tribunal, by its Award dated 21st July, 1992, held that the termination of services of respondent 1 amounted to "Retrenchment" within the meaning of Section 2(oo) of the Industrial Disputes Act and since all other legal requirements had not been followed, the termination was bad and consequently she was entitled to reinstatement as also fifty per cent of back wages from the date of termination till reinstatement.

4. This Award was challenged by the petitioner through a Writ Petition in the Allahabad High Court (Lucknow Bench) and the High Court, by the impugned judgment dated 28.10.1997, dismissed the writ petition upholding the findings of the Tribunal that termination of respondent's services was "retrenchment." The High Court further held that while invoking the provisions of Clause 17(g) of the Certified Standing Orders, the petitioner ought to have been given an opportunity of hearing to respondent.

5. Mr. Manoj Swarup, learned counsel appearing for the petitioner in this Special Leave Petition, has contended that since, there was a specific provision contained in Para 17(g) of the Certified Standing Orders that if the employee overstays the leave without permission for more than seven days his services would be liable to automatic termination, the Industrial Tribunal as also the High Court were wrong in holding that the termination of her services was bad. He has also contended that the termination of respondent's services on account of her continued absence would not amount to "retrenchment" as defined in Section 2(oo) of the Industrial Disputes Act (for short, 'the Act') and, therefore, there was no occasion for the High Court or the Industrial Tribunal to grant reinstatement or direct payment of back wages.

6. The Tribunal as also the High Court have recorded a categorical finding of fact that the respondent was a permanent employee in the petitioner's establishment.

7. We have to see whether the services of the respondent, who had acquired the status of a permanent employee, could be terminated, in the mode and manner adopted by the petitioner, who maintains that it was done in accordance with Clause 17(g) of the Certified Standing Orders and no grievance can, therefore, be raised by the respondent on that account.

8. Before examining Clause 17(g) of the Certified Standing Orders, we may point out that the concept of employment under industrial law involves, like any other employment, three ingredients:

(i) management/industry/factory/employer, who employs or, to put it differently, engages the services of the workman;

(ii) employee/workman, that is to say, a person who works for the employer for wages or monetary compensation; and

(iii) contract of employment or the agreement between the employer and the employee whereunder the employee/workman agrees to render services to the employer, in consideration of wages, subject to the supervision and control of the employer.

9. The general principles of the Contract Act applicable to an agreement between two persons having capacity to contract, are also applicable to a contract of industrial employment, but the relationship so created is partly contractual, in the sense that the agreement of service may give rise to mutual obligations, for example, the obligation of the employer to pay wages and the corresponding obligation of the workman to render services, and partly non-contractual, as the States have already, by legislation, prescribed positive obligations for the employer towards his workmen, as, for example, terms, conditions and obligations prescribed by the Payment of Wages Act, 1936; Industrial Employment (Standing Orders) Act, 1946; Minimum Wages Act, 1948; Payment of Bonus Act, 1965; Payment of Gratuity Act, 1972 etc.

10. Prior to the enactment of these laws, the situation, as it prevailed in many industrial establishments, was that even terms and conditions of service were often not reduced into writing nor were they uniform in nature, though applicable to a set of similar employees. This position was wholly incompatible to the notions of social justice, inasmuch as there being no statutory protection available to the workmen; the contract of service was often so unilateral in character that it would be described as mere manifestation of subdued wish of the workmen to sustain their living at any cost. An agreement of this nature was an agreement between two unequal, namely those who invested their labour and toil, flesh and blood, as against those who brought in Capital. The necessary corollary of such an agreement was the generation of conflicts at various levels disturbing industrial peace and resulting necessarily in loss of production and sometimes even closure or lock out of the industrial establishment. In order to overcome this difficulty and achieve industrial harmony and peace, the Industrial Employment (Standing Orders) Act, 1946 was enacted requiring the management to define, with sufficient precision and clarity, the conditions of employment under which the workmen were working in their establishments. The underlying object of the Act was to introduce uniformity in conditions of employment of workmen discharging similar functions in the same industrial establishment under the same management and to make those terms and

conditions widely known to all the workmen before they could be asked to express their willingness to accept the employment.

11. The Act also aimed at achieving a transition from mere contract between unequals to the conferment of "Status" on workmen through conditions statutorily imposed upon the employers by requiring every industrial establishment to frame "Standing Orders" in respect of matters enumerated in the Schedule appended to the Act. The Standing Orders so made are to be submitted to the Certifying Officer who is required to make an enquiry whether they have been framed in accordance with the Act and on being satisfied that they are in consonance with provisions of the Act, to certify them. Once the Standing Orders are so certified, they become binding upon both the parties, namely, the employer and the employees. The Certified Standing Orders are also required to be published in the manner indicated by the Act which also sets out the Model Standing Orders. Originally, the jurisdiction of the Certifying Officer was limited to examine the draft Standing Orders and compare them with the model Standing Orders. But in 1956, the Act was radically amended and Section 4 gave jurisdiction to the Certifying Officer, as also the Appellate Authority, to adjudicate and decide the questions, if raised, relating to the fairness or reasonableness of any provision of the Standing Orders.

12. In pursuance of the above powers, the petitioner framed its own Standing Orders which have been duly certified. Clause 17(g) of the Certified Standing Orders, which constitutes the bone of contention between the parties, is quoted below:

> The services of a workman are liable to automatic termination if he overstays on leave without permission for more than seven days. In case of sickness, the medical certificate must be submitted within a week.

13. It was in pursuance of the above provision that the services of the respondent were terminated by the petitioner by observing in its letter dated 12th April, 1985, as under:

> "The services of Mrs. Shammi Bhan, Token No. 158, Operator ceased automatically from Uptron Capacitors Ltd., Lucknow with immediate effect, in accordance with the Clause 17(g) of the Certified Standing Orders of Uptron Capacitors Limited."

14. Respondent No. 1, admittedly, was a permanent employee.

15. Conferment of 'permanent' status on an employee guarantees security of tenure. It is now well settled that the services of a permanent employee, whether employed by the Government, or Government company or Government instrumentality or Statutory Corporation or any other "Authority" within the meaning of Article 12, cannot be terminated abruptly and arbitrarily, either by giving him a month's or three months' notice or pay in lieu thereof or even without notice, notwithstanding that there may be a stipulation to that effect either in the contract of service or in the Certified Standing Orders.

19. This being the legal position, the action taken against the respondent, who was, as pointed out earlier, was a permanent employee, was wholly illegal.

20. There is another angle of looking at the problem. Clause 17(g), which has been extracted above, significantly does not say that the services of a workman who overstays the

leave for more than seven days shall stand automatically terminated. What it says is that "the services are liable to automatic termination." This provision, therefore, confers a discretion upon the management to terminate or not to terminate the services of an employee who overstays the leave. It is obvious that this discretion cannot be exercised, or permitted to be exercised, capriciously. The discretion has to be based on an objective consideration of all the circumstances and material which may be available on record. What are the circumstances which compelled the employee to proceed on leave; why he overstayed the leave; was there any just and reasonable cause for overstaying the leave; whether he gave any further application for extension of leave; whether any medical certificate was sent if he had, in the meantime, fallen ill? These are questions which would naturally arise while deciding to terminate the services of the employee for overstaying the leave. Who would answer these questions and who would furnish the material to enable the management to decide whether to terminate or not to terminate the services are again questions which have an answer inherent in the provision itself, namely, that the employee against whom action on the basis of this provision is proposed to be taken must be given an opportunity of hearing. The principles of natural justice, which have to be read into the offending clause, must be complied with and the employee must be informed of the grounds for which action was proposed to be taken againt him for overstaying the leave.

23. In view of this observation, the question whether the stipulation for automatic termination of services of overstaying the leave would be legally bad or not, was not decided by this Court in the judgment relied upon by Mr. Manoj Swarup. In that judgment the grounds on which the interference was made was different. The judgment of the High Court was set aside on the ground that it could not decide the disputed question of fact in a writ petition and the matter should have been better left to be decided by the Industrial Tribunal. Further, the High Court was approached after more than six years of the date on which the cause of action had arisen without there being any cogent explanation for the delay. Mr. Manoj Swarup contended that it was conceded by the counsel appearing on behalf of the employee that the provision in the Standing Orders regarding automatic termination of services is not bad. This was endorsed by this Court by observing that "Learned counsel for the respondent rightly made no attempt to support this part of the High Court's order." This again cannot be treated to be a finding that provision for automatic termination of services can be validly made in the Certified Standing Orders. Even otherwise, a wrong concession on a question of law, made by a counsel, is not binging on his client. Such concession cannot constitute a just ground for a binding precedent. The reliance placed by Mr. Manoj Swarup on this judgment, therefore, is wholly out of place.

24. It will also be significant to note that in the instant case the High Court did not hold that Clause 17(g) was ultra vires but it did not hold that the action taken against the respondent to whom an opportunity of hearing was not given was bad.

25. In view of the above, we are of the positive opinion that any clause in the Certified Standing Orders providing for automatic termination of services of a permanent employee, not directly related to "Production" in a Factory or Industrial Establishment, would be bad if it does not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically.

29. By the Amending act 49 of 1984, two further exceptions were introduced in the definition by inserting Clause (bb) with effect from 18.8.84; one was the termination of service on the ground of continued ill-health of the workman and the other was termination of service on account of non-renewal of the contract of employment on the expiry of the term of that contract. If such contract of employment contained a stipulation for termination of service and the services of the workman are terminated in accordance with that stipulation, such termination, according to Clause (bb), would also not amount to "Retrenchment."

30. What was contended before the Tribunal as also before the High Court was that the termination of the services of respondent was covered by clause (bb) of Section 2(oo) and, therefore, it could not be treated as "Retrenchment" with the result that other statutory provisions, specially those contained in Section 25F of the Act were not required to be complied with. This argument which was not accepted by the Tribunal and the High Court has been stressed before us also and here also it must meet the same fate as it is without any substance or merit.

31. From the facts set out above, it would be seen that the respondent was a permanent employee of the petitioner. There was no fixed term contract of service between them. There was, therefore, no question of service being terminated on the expiry of that contract. In the absence of a fixed-term contract between the parties, the question relating to the second contingency, namely, that the termination was in pursuance of a stipulation to the effect in the contract of employment, does not arise.

32. The contract of employment referred to in the earlier part of Clause (bb) has to be the same as is referred to in the latter part. This is clear by the use of words "such contract" in the earlier part of the Clause. What the clause, therefore, means is that there should have been a contract of employment for a fixed term between the employer and the workman containing a stipulation that the services could be terminated even before the expiry of the period of contract. If such contract, on the expiry of its original period, is not renewed and the services are terminated as a consequence of that period, it would not amount to "Retrenchment." Similarly, if the services are terminated even before the expiry of the period of contract but in pursuance of a stipulation contained in that contract the services could be so terminated, then in that case also, the termination would not amount to "retrenchment." This view also finds support from a decision of this Court in ***Escorts Ltd.*** **v.** ***Presiding Officer*** [(1997) 11 SCC 621].

33. This case does not fall in either of the two situations contemplated by Clause (bb). The 'Rule of Exception,' therefore, is not applicable in the instant case and consequently the finding recorded by the Tribunal on "retrenchment" cannot be disturbed.

34. For the reasons stated above, we find no merit in this petition which is dismissed at the SLP stage.

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[***NOTE:*** The ***Uptron*** decision was followed later in ***Haryana State F.C.C.W. Store Ltd***. **v.** ***Ram Niwas*** (2002) 5 SCC 654].

S.M. Nilajkar **v.** *Telecom. District Manager, Karnataka*

2003 (3) SCALE 533

R.C. LAHOTI, J. – A number of workers were engaged as casual labourers for the purpose of expansion of telecom facilities in the district of Belgaum, Karnataka, during the years 1985-86 and 1986-87. The services of these workers were utilized for digging, laying cables, erecting poles, drawing lines and other connected works. It appears that the services of these workmen were terminated sometime during the year 1987 and they were not engaged on work thereafter. In ***Daily Rated Casual Labour employed under P&T Deptt. through Bhartiya Dak Tar Mazdoor Manch* v.** ***Union of India*** [1988 (1) SCC 122], the Supreme Court by its judgment dated 27.10.1987 directed the Department to formulate a scheme under which all casual labourers who had rendered more than one year's continuous service could be absorbed. Pursuant to the said directions, the Department of Telecommunications formulated a scheme called "*Casual Labourers (Grant of Temporary Status and Regularisation) Scheme, 1989*" which came into force w.e.f. 01.10.1989. A list of casual labourers was drawn up for inclusion under the said scheme. On 16.01.1990, a number of workers whose names were not included for regularization under the said scheme, raised disputes before the Assistant Labour Commissioner, Mangalore. Conciliation proceedings were initiated but they failed. Several disputes were referred for adjudication by the Labour Court in the years 1994 to 1997. The disputes which were referred were almost identically framed. In substance, the dispute was – 'whether the termination of the services of (name of worker) w.e.f. (a date in 1986 or 1987), Casual Mazdoor by the Management of Telecom District Manager, Belgaum is justified or not? If not, to what relief the workman is entitled?

2. A consolidated enquiry was held into all the disputes and they were disposed of by a common award dated 21.06.1999 by the Central Government Industrial Tribunal-cum-Labour Court, Bangalore. The Tribunal directed the employer to reinstate all the workmen into service, with the benefit of continuity of service and with 50% of back wages. The employer filed ten writ petitions in the High Court of Karnataka which were disposed of on 16.09.1999 by a common judgment delivered by a learned Single Judge. The learned Single Judge held that the workers were not project employees as contended by the employer. The appointment was not for any particular project and hence would not be governed by sub-clause (bb) of clause (oo) of Section 2 of the Industrial Disputes Act, 1947 (hereinafter 'the Act' for short). Of the workmen each had rendered a continuous service within the meaning of Section 25B of the Act for a period over 240 days and, therefore, their termination amounted to retrenchment which was invalid for non-compliance with Section 25F of the Act. The workmen were, therefore, entitled to reinstatement. However, there was a delay of nearly 7 to 9 years in raising the disputes. The workmen had not placed any material on record to hold that there was no delay and the disputes were promptly raised. It was because of this delay that the employer was not in a position to produce the record relating to the days for which the workmen had worked inasmuch as according to the standing instructions of the Department, the registers of muster rolls were preserved for a period of 5 years only, whereafter they were eliminated. The Tribunal did not err in believing the oral evidence adduced by the workmen as to the period of their employment (i.e. for over 240 days). On account of delay in raising

the dispute, the High Court held that the workmen were not entitled to any back wages. The learned Single Judge directed the award to be modified to that extent and upheld the Tribunal's award to the extent to which it directed reinstatement with the benefit of continuity of service and consequential benefits but without back wages.

3. The employer filed intra-court writ appeals under Section 4 of the Karnataka High Court Act, which were heard and disposed of by a Division Bench of the High Court vide the impugned order dated 9.02.2000. Before the Division Bench, it was an admitted case of the parties that the workmen were employed by the Telecom Department as casual labourers in connection with a project for extension of telecom facilities in the district of Belgaum. Their services were utilized for digging, laying of coaxial cables and other sundry work. The project was completed sometime in the year 1986-87. The disputes were raised after a lapse of 7 to 9 years.

4. Before the Division Bench, the employer placed reliance on Circular No. 270/6/84-STM dated 30.03.1985 issued by the Director General (Posts & Telegraphs), New Delhi to all heads of telecom circles etc. The Circular read as under:

> Copy of Letter No. 270/6/84-STM, dated 30.3.1985 from the DG P&T, New Delhi to All Heads of Telecom Circles, etc.
>
> ***Sub. Casual Labour – engagement****:* 15.6.80, A number of instructions have been issued from time to time stressing the need to limit the number of casual labour employed by the Telecom Units to a minimum. It is, however, regretted to note that in spite of these instructions, the number of such casual labours in Telecom Circles/Districts is increasing.
>
> 2. The position has been reviewed and it has been decided that fresh recruitment and employment of casual labour for any type of work should be stopped forthwith in Telecom Circles/Districts. The casual labour already in employment should be utilized only (1) for work of casual nature, (2) all installation works of temporary nature, (3) cable laying work and (4) lines construction/dismantling work. Regular posts of Mazdoors/Group 'D' posts are sanctioned for maintenance/Admn. Work as per standards already laid down by this office from time to time. As such, no casual mazdoor are required for utilized for maintenance/office work, they should be reallotted/transferred and used in the works enumerated above. Every effort should be made to reduce the number of casual mazdoors employed and in no case fresh recruitment/employment made.
>
> 3. These orders would, however, not apply to the coaxial cable laying work in the projects organization and in line dismantling/constructions work in the Electrification Projects Circle. The casual labour for such works in these units could be engaged only for specific jobs and retrenched as soon as the work is over.
>
> 4. The Heads of Telecom Circles/Districts may take immediate action to bring these instructions to the notice of all subordinate units for strict adherence. The receipt of this letter may please be acknowledged .x x x x x

They should ensure that no fresh recruitment and employment of casual mazdoors for any type of work is made in future. All subordinate units may be instructed suitably. They should acknowledge the receipt of this communication by next post.

5. Another Circular No. 269-29/87-STM dated 10th November 1988 issued by the Government of India, Ministry of Communications, Department of Telecommunications, New Delhi, was relied on, dealing with the subject of regularization of casual labourers. Guidelines for eligibility for regularization of casual labourers as against 14,117 posts of regular mazdoors (group 'D') for various circles were laid down. Out of several eligibility conditions, one was that the casual labourer/part-time casual labourer should have served the Department for a minimum period of 7 years as on 31.03.1986. Admittedly, the respondent workmen did not satisfy this eligibility condition.

6. The Division Bench held that the workmen (respondents before it) were employed under a project of the Telecom Department and were, therefore, covered by sub-clause (bb) of clause (oo) of Section 2 of the Act. It was a clear case of termination of services of the workmen as a result of non-renewal of contract of employment on the expiry of the contract. The question of compliance of Section 25F of the Act did not arise. The respondent-workmen could not be said to have been retrenched. The engagement of the workmen was on daily wages and only for the purpose of completion of the project undertaken by the Telecom Department for laying coaxial cables in the Belgaum District. That the project had been completed in 1986-87 itself, is not in dispute. Because of completion of the project their services stood terminated *ipso facto*. The Department's Circular dated 30.3.1985 was relied upon.

7. Feeling aggrieved by the judgment of the Division Bench, these ten appeals have been filed by the workers by special leave.

8. The learned counsel for the workmen-appellants have submitted that the workmen were employed for general maintenance work of the Telecom Department and not in any project work. There are two types of organizations in Telecom Department, namely, (i) Telecom Circles, and (ii) Telecom Project Circles. The workmen were employed in Karnataka Telecom Circle, Belgaum Division. The Circular dated 30.03.1985 has no application to these workmen. The disputes were promptly raised and pursued. The reference sought for by the workmen cannot be said to be delayed or suffering from lapse particularly when the law does not prescribe any period of limitation for raising a limitation under Section 10 of the Act. It was, therefore, submitted that the award as given by the Tribunal was not liable to be interfered with. On behalf of the employer-respondent, the same pleas have been reiterated as were taken before the Tribunal and the High Court. It is submitted that the workmen are project employees whose services are liable to be dispensed with *ipso facto* on termination of the project and that the Division Bench of the High Court has rightly held the disputes raised by the workmen to be vitiated by delay and laches.

9. Let it be stated that on the material available we are not inclined to upset the finding of fact arrived at in the impugned judgment that the appellant workmen are project employees and not employed in any department. The principal issue argued by the learned counsel for

the parties centres around the status of project or scheme employees – whether the workmen recruited for discharging temporary job under a project can assist on compliance of Section 25F of the Act if their services are dispensed with on the project coming to an end?

11. It is common knowledge that the Government as a welfare State floats several schemes and projects generating employment opportunities, though they are short-lived. The objective is to meet the need of the moment. The benefit of such schemes and projects is that for the duration they exist, they provide employment and livelihood to such persons as would not have been able to secure the same but for such schemes or projects. If the workmen employed for fulfilling the need of such passing-phase-projects or schemes were to become a liability on the employer-State by too liberally interpreting the labour laws in favour of the workmen, then the same may well act as a disincentive to the State for floating such schemes and the State may opt to keep away from initiating such schemes and projects even in times of dire need, because it may feel that by opening the gates of welfare it would be letting-in onerous obligations entailed upon it by extended application of the labour laws. Sub-clause (bb) in the definition of retrenchment was introduced to take care of such like-situations by Industrial Disputes (Amendment) Act, 1984 with effect from 18.8.1984.

12. 'Retrenchment' in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well-settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well-settled that the Parliament has employed the expression "the termination by the employer of the service of a workman *for any reason whatsoever*" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term 'retrenchment' a meaning wider than what is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term 'retrenchment,' and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of 'retrenchment' *de hors* the reason for termination. To be expected from within the meaning of 'retrenchment' the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of 'retrenchment.'

13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simlicitor, which provided *inter alia* that the employment shall come to an end on the expiry of the scheme or project; and

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.

iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.

14. The engagement of a workman as a daily-wager does not by itself amount to putting the workman on notice that he was being envisaged in a scheme or project which was to last only for a particular length of time or up to the occurrence of some event, and therefore, the workman ought to know that his employment was short-lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short-lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore complain that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of sub-clause (bb) abovesaid. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment. The appropriate provision which should govern the cases of the appellants is Section 25FFF.

16. It is pertinent to note that in ***Hariprasad* v. *A.D. Divelkar*** [(1957) SCR 121] the Supreme Court held that 'retrenchment' as defined in Section 2(oo) and as used in Section 25F has no wider meaning than the ordinary accepted connotation of the word, that is, discharge of surplus labour or staff by the employer for any reason whatsoever otherwise than by way of punishment inflicted in disciplinary action. Retrenchment was held to have no application where the services of *all* workmen were terminated by the employer on a real and *bona fide* closure of business or on the business or undertaking being taken over by another employer. The abovesaid view of the law taken by the Supreme Court resulted in promulgation of the Industrial Disputes (Amendment) Ordinance, 1957 with effect from 27.4.1957, later on replaced by an Act of Parliament (Act 18 of 1957) with effect from 6.6.1957 whereby Section 25FF and Section 25FFF were introduced in the body of the Industrial Disputes Act, 1957. Section 25FF deals with the case of transfer of undertakings with which, we are not concerned. Section 25FFF deals with closing down of undertakings. The term 'undertaking' is not defined in the Act. The relevant provisions use the term 'industry'. Undertaking is a concept narrower than industry. An undertaking may be a part of the whole, that is, the industry. It carries a restricted meaning. With this amendment it is clear that closure of a project or scheme by the State Government would be covered by closing down of undertaking within the meaning of Section 25FFF. The workman would therefore be entitled to notice and compensation in accordance with the provisions of Section 25F though the right of employer to close the undertaking for any reason whatsoever cannot be questioned. Compliance of Section 25F shall be subject to such relaxations as are provided by Section 25FFF. The undertaking having been closed on account of unavoidable circumstances beyond the control of the employer, i.e. by its own force as it was designed and destined to have a limited life only, the compensation payable to the workman under clause (b) of Section 25F shall not exceed his average pay for three months. This is so because of failure on the part of respondent employer to allege and prove that the termination of employment fell within sub-Clause (bb) of Clause (oo) of Section 2 of the Act.

17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in ***M/s. Shalimar Works Limited* v. *Their Workmen*** that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reason therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of the most of the old workmen was held to be fatal in ***M/s. Shalimar Works Limited* v. *Their Workman***. In ***Nedungadi Bank Ltd.*, v. *K.P. Madhavankutty***, a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In ***Ratan Chandra Sammanta* v. *Union of India***, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in ***Daily Rated Casual Employees Under P & T Department* v. *Union of India*** the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16.1.1990 they were refused to be accommodated in the scheme. On 28.12.1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay.

19. For all the foregoing reasons we are of the opinion that the decision of the Division Bench deserves to be set aside and that of the learned Single Judge restored, except for the finding that the appellants were not project employees.

21. The appeals are allowed. The impugned decision of the Division Bench is set aside and that of the learned Single Judge is restored as above.

* * * * *

The Workmen **v.** *Firestone Tyre & Rubber Co.*

(1976) 3 SCC 819

UNTWALIA, J.- 2. The respondent company in this appeal has its head office at Bombay. It manufactures tyres at its Bombay factory and sells the tyres and other accessories in the markets throughout the country. The company has a distribution office at Nicholson Road, Delhi. There was a strike in the Bombay factory from March 3, 1967 to May 16, 1967 and again from October 4, 1967. As a result of the strike, there was a short supply of tyres etc. to the distribution office. In the Delhi office, there were 30 employees at the relevant time. 17 workmen out of 30 were laid off by the management as per their notice dated February 3, 1968, which was to the following effect:

> Management is unable to give employment to the following workmen due to much reduced production in the company's factory resulting from strike in one of the factory departments.
>
> These workmen are, therefore, laid off in accordance with law with effect from February 5, 1968.

3. The lay-off of the 17 workmen whose names were mentioned in the notice was recalled by the management on April 22, 1968. The workmen were not given their wages or compensation for the period of lay-off. An industrial dispute was raised and referred by the Delhi Administration on April 17, 1968 even when the lay-off was in operation. The reference was in the following terms:

> Whether the action of the management to 'lay off 17 workmen with effect from February 5, 1968 is illegal and/or unjustified, and if so, to what relief are these workmen entitled?

4. The Presiding Officer of the Additional Industrial Tribunal, Delhi has held that the workmen are not entitled to any lay-off compensation. Hence this is an appeal by their union.

6. The question which falls for our determination is whether the management had a right to lay off their workmen and whether the workmen are entitled to claim wages or compensation.

7. The simple dictionary meaning according to the ***Concise Oxford Dictionary*** of the term 'lay-off is "period during which a workman is temporarily discharged". The term 'lay-off' has been well-known in the industrial arena. Disputes were often raised in relation to the 'lay-off' of the workmen in various industries. Sometimes compensation was awarded for the period of lay-off but many a time when the lay-off was found to be justified workmen were not found entitled to any wages or compensation. In ***Gaya Cotton & Jute Mills Ltd.*** **v.** ***Goya Cotton & Jute Mills Labour Union*** [(1952) 2 LLJ 37] the standing orders of the company provided that the company could under certain circumstances stop any machine or machines or department or departments, wholly or partially for any period or periods without notice or without compensation in lieu of notice In such a situation for the closure of the factory for a certain period, no claim for compensation was allowed by the Labour Appellate Tribunal of India. We are aware of the distinction between a lay-off and a closure. But just to point out the history of the law we have referred to this case.

8. Then, came an amendment in the Industrial Disputes Act, 1947 - hereinafter referred to as the Act - by Act 43 of 1953. By the same Amending Act, Chapter VA was introduced in the Act to provide for lay-off and retrenchment compensation. Section 25A excluded the industrial establishments in which less than 50 workmen on an average per working day had been employed in the preceding calendar month from the application of Sections 25C to 25E. Section 25C provides for the right of laid-off workmen for compensation and broadly speaking compensation allowable is 50 per cent of the total of the basic wages and dearness allowance that would have been payable to the workman had he not been laid off. It would be noticed that the sections dealing with the matters of lay-off in Chapter VA are not applicable to certain types of industrial establishments. The respondent is one such establishment because it employed only 30 workmen at its Delhi office at the relevant time. In such a situation the question beset with difficulty of solution is whether the laid-off workmen were entitled to any compensation, if so, what?

10. The effect of the provisions aforesaid is that for the period of lay-off in an industrial establishment to which the said provisions apply, compensation will have to be paid in accordance with Section 25C. But if a workman is entitled to benefits which are more favourable to him than those provided in the Act, he shall continue to be entitled to the more favourable benefits. The rights and liabilities of employers and workmen in so far as it relate to lay-off and retrenchment, except as provided in Section 25J, have got to be determined in accordance with the provisions of Chapter VA.

11. The ticklish question which does not admit of an easy answer is as to the source of the power of management to lay off a workman. The employer has a right to terminate the services of a workman. Therefore, his power to retrench presents no difficulty as, retrenchment means the termination by the employer of the service of a workman for any reason whatsoever as mentioned in clause (oo) of Section 2 of the Act. But lay-off means the failure, refusal or inability of employer on account of contingencies mentioned in clause (*kkk*) to give employment to a workman whose name is borne on the muster rolls of his industrial establishment. It has been called a temporary discharge of the workman or a temporary suspension of his contract of service. Strictly speaking, it is not so. It is merely a fact of temporary unemployment of the workman in the work of the industrial establishment. Mr S. N. Andley submitted with reference to the explanation and the provisos appended to clause (*kkk*) that the power to lay off a workman is inherent in the definition. We do not find any words in the definition clause to indicate the conferment of any power on the employer to lay off a workman. His failure or inability to give employment by itself militates against the theory of conferment of power. The power to lay off for the failure or inability to give employment has to be searched somewhere else. No section in the Act confers this power.

12. There are two small matters which present some difficulty in the solution of the problem. In clause (*i*) of the explanation appended to sub-section (2) of Section 25B the words used are "he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment" indicating that a workman can be laid off under the Industrial Disputes Act also. But it is strange to find that no section in Chapter VA in express language or by necessary implication confers any power, even on the

management of the industrial establishment to which the relevant provisions are applicable, to lay off a workman. This indicates that there is neither a temporary discharge of the workman nor a temporary suspension of his contract of service. Under the general law of master and servant, an employer may discharge an employee either temporarily or permanently but that cannot be without adequate notice. Mere refusal or inability to give employment to the workman when he reports for duty on one or more grounds mentioned in clause (*kkk*) of Section 2 is not a temporary discharge of the workman. Such a power, therefore, must be found out from the terms of contract of service or the standing orders governing the establishment. In the instant case the number of workmen being only 30, there were no standing orders certified under the Industrial Employment (Standing Orders) Act, 1946. Nor was there any term of contract of service conferring any such right of lay-off. In such a situation the conclusion seems to be inescapable that the workmen were laid off without any authority of law or the power in the management under the contract of service. In industrial establishments where there is a power in the management to lay off a workman and to which the provisions of Chapter VA apply, the question of payment of compensation will be governed and determined by the said provisions. Otherwise Chapter VA is not a complete Code as was argued on behalf of the respondent company in the matter of payment of layoff compensation. This case, therefore, goes out of Chapter VA. Ordinarily and generally the workmen would be entitled to their full wages but in a reference made under Section 10(1) of the Act, it is open to the tribunal or the court to award a lesser sum finding the justifiability of the lay-off.

13. In **Management** ***of Hotel Imperial, New Delhi*** **v.** ***Hotel Workers' Union*** [AIR 1959 SC 1342] in a case of suspension of a workman it was said by Wanchoo, J. as he then was, delivering the judgment on behalf of the Court at page 482:

> Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so-called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

14. We have referred to the suspension cases because in our opinion the principles governing the case of lay-off are very akin to those applicable to a suspension case.

15. In ***Veiyra*** **(*M. A.*) v.** ***Fernanda*** [AIR 1957 Bom. 100], a Bench of the Bombay High Court opined that under the general law the employer was free to dispense with the services of a workman, but under the Industrial Disputes Act he was under an obligation to lay him off; that being so, the action of lay-off by the employer could nut be questioned as being ultra vires. We do not think that the view expressed by the Bombay High Court is correct.

16. There is an important decision of this Court in ***Workmen of Dewan Tea Estate*** **v.** ***Management*** [AIR 1964 SC 1458] on which reliance was placed heavily by Mr M. K.

Ramamurthi appearing for the appellant and also by Mr Andley for the respondent. One of the questions for consideration was whether Section 25C of the Act recognises the common law right of the management to declare a lay-off for reasons other than those specified in the relevant clause of the standing order. While considering this question, Gajendragadkar, J. as he then was, said at page 554:

> The question which we are concerned with at this stage is whether it can be said that Section 25C recognises a common law right of the industrial employer to lay off his workmen. This question must, in our opinion, be answered in the negative. When the laying off of the workmen is referred to in Section 25C, it is the laying off as defined by Section 2(kkk) and so workmen who can claim the benefit of Section 25C must be workmen who are laid off and laid off for reasons contemplated by Section 2(kkk); that is all that Section 25C means.

Then follows a sentence which was pressed into service by the respondent. It says:

> If any case is not covered by the standing orders, it will necessarily be governed by the provisions of the Act, and lay-off would be permissible only where one or the other of the factors mentioned by Section 2(kkk) is present, and for such lay-off compensation would be awarded under Section 25C.

In our opinion, in the context, the sentence aforesaid means that if the power of lay-off is there in the standing orders but the grounds of lay-off are not covered by them, rather, are governed by the provisions of the Act, then lay-off would be permissible only on one or the other of the factors mentioned in clause (*kkk*). Subsequent discussions at pages 558 and 559 lend ample support to the appellant's argument that there is no provision in the Act specifically providing that an employer would be entitled to lay off his workmen for the reasons prescribed by Section *2*(*kkk*).

17. Mr Andley placed strong reliance upon the decision of this Court in ***Sanghi Jeevaraj Ghewar Chand*** **v.** ***Secretary, Madras Chillies,Grains Kirana Merchants Workers' Union*** [(1969) 1 SCC 366]. The statute under consideration in this case was the Payment of Bonus Act, 1965 and it was held that the Act was intended to be a comprehensive and exhaustive law dealing with the entire subject of bonus of the persons to whom it should apply. The Bonus Act was not to apply to certain establishments. Argument before the Court was that bonus was payable de hors the Act in such establishments also. This argument was repelled and in that connection it was observed at page 381:

> It will be noticed that though the Industrial Disputes Act confers substantive rights on workmen with regard to lay-off, retrenchment compensation, etc., it does not create or confer any such statutory right as to payment of bonus. Bonus was so far the creature of industrial adjudication and was made payable by the employers under the machinery provided under that Act and other corresponding Acts enacted for investigation and settlement of disputes raised thereunder. There was, therefore, no question of Parliament having to delete or modify item 5 in the Third Schedule to Industrial Disputes Act or any such provision in any corresponding Act or its having to exclude any right to bonus thereunder by any categorical exclusion in the present case.

And finally it was held at page 385:

> Considering the history of the legislation, the background and the circumstances in which the Act was enacted, the object of the Act and its scheme, it is not possible to accept the construction suggested on behalf of the respondents that the Act is not an exhaustive Act dealing comprehensively with the subject-matter of bonus in all its aspects or that Parliament still left it open to those to whom the Act does not apply by reason of its provisions either as to exclusion or exemption to raise a dispute with regard to bonus through industrial adjudication under the Industrial Disputes Act or other corresponding law.

In a case of compensation for lay-off the position, is quite distinct and different. If the term of contract of service or the statutory terms engrafted in the standing orders do not give the power of lay-off to the employer, the employer will be bound to pay compensation for the period of lay-off which ordinarily and generally would be equal to the full wages of the concerned workmen. If, however, the terms of employment confer a right of lay-off on the management, then, in the case of an industrial establishment which is governed by Chapter VA, compensation will be payable in accordance with the provisions contained therein. But compensation or no compensation will be payable in the case of an industrial establishment" to which the provisions of Chapter VA do not apply, and it will be so as per the terms of the employment.

19. In the case of the Delhi office of the respondent the tribunal has held that the lay-off was justified. It was open to the tribunal to award a lesser amount of compensation than the full wages. Instead of sending back the case to the tribunal, we direct that 75 per cent of the basic wages and dearness allowance would be paid to the workmen concerned for the period of lay-off. As we have said above, this will not cover the case of those workmen who have settled or compromised their disputes with the management.

* * * * *

U.P.State Brassware Corpn. Ltd. v. *Uday Narain Pandey*

(2006) 1 SCC 479

S.B. SINHA, J. - Whether direction to pay back wages consequent upon a declaration that a workman has been retrenched in violation of the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 (equivalent to Section 25F of the Industrial Disputes Act, 1947) as a rule is in question in this appeal which arises out of a judgment and order dated 6.2.2004 passed by a Division Bench of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 23890 of 1992 dismissing the appeal preferred by the Appellant herein arising out of a judgment and order dated 8th July, 1992.

The Appellant is an undertaking of the State of Uttar Pradesh. The Respondent herein was appointed on 23rd July, 1984 in a project known as Project Peetal Basti by the Appellant for looking after the construction of building, cement loading and unloading. He worked in the said project from 23.7.1984 till 8.1.1987. He was thereafter appointed in Non-Ferrous Rolling Mill. By an order dated 12/13.2.1987, the competent authority of the Non-Ferrous Mill of the Appellant passed the following order:

> "Following two persons are hereby accorded approval for appointment in Non-Ferrous Rolling Mill on minimum daily wages for the period w.e.f. date indicated against their name till 31-3-1987.
>
> | **Sl No.** | **Name** | **Date** |
> |---|---|---|
> | 1. | Sh. Hori Lal | 7-1-1987 |
> | 2. | Sh. Uday Narain Pandey | 8-1-1987" |

The services of the Respondent were terminated on the expiry of his tenure. An industrial dispute having been raised, the appropriate government by an order dated 14.9.1998 referred the following dispute for adjudication by the Presiding Officer, Labour Court, Uttar Pradesh:

> Whether the employer's decision to terminate the Workman Sh. Uday Narain son of Pateshwari Pandey w.e.f. 1-4-87 was illegal and improper? If yes whether the concerned workman is entitled to the benefit of retrenchment and other benefit?

The Project Officer of the Appellant-Corporation appears to have granted a certificate showing the number of days on which the Respondent performed his duties.

The Labour Court in its award dated 31.10.1991 came to the finding that the Respondent worked for more than 240 days in each year of 1985-1986. It was directed:

> Therefore, I reached to the decision that the employer should reinstate the concerned workman Uday Narain Pandey son of Sh. Pateshwari Pandey w.e.f. the date of retrenchment i.e. 1-4-87 and he should be paid entire backwage with any other allowances w.e.f. same date within 30 days from the date of this order together with Rs. 50/- towards cost of litigation to Sh. Uday Narain Pandey. I decide accordingly in this Industrial Dispute.

The Appellant herein filed a writ petition before the Allahabad High Court in May, 1992 which was marked as Civil Misc. Writ Petition No. 23890 of 1992 inter alia contending that as the Respondent had not rendered service continuously for a period of 240 days during the period of 12 calendar months immediately before his retrenchment uninterruptedly, he was not a workman within the meaning of Section 2(z) of the U.P. Industrial Disputes Act. It was further contended that the appointment of the Respondent was on contractual basis for a fixed tenure which came to an end automatically as stipulated in the aforementioned order dated 12/13.2.1987.

An application was filed by the Respondent herein under the Payment of Wages Act wherein an award was passed. The said order was also questioned by the Appellant by filing a writ application before the High Court and by an order dated 12.8.1993, the High Court directed it to pay a sum of rupees ten thousand to the Respondent. Pursuant to or in furtherance of the said order, the Respondent is said to have been paid wages upto February, 1996. By reason of the impugned order dated 6.2.2004, the writ petition was dismissed holding:

> Having heard the learned counsel for the Petitioners and having perused the record, I am of the opinion that the aforesaid findings recorded by the Labour Court cannot be said to be perverse. The learned senior counsel then contended that the Petitioner No. 1 i.e. U.P. State Brassware Corporation Ltd. has been closed down. Be that as it may, the position of the Respondent workman would be the same as that all the similar employees and this cannot be a ground to set aside the award of the Labour Court.

Ms. Rachana Srivastava, learned counsel appearing on behalf of the Appellant would bring to our notice that the Appellant's industries have been lying closed since 26.3.1993 and in that view of the matter, the Labour Court as also the High Court committed a serious error in passing the impugned judgment. The appointment of the Respondent, the learned counsel would contend, being a contractual one for a fixed period, Section 6-N of the U.P. Industrial Disputes Act would have no application.

Relying on or on the basis of the principle of 'no work no pay', it was urged that for the period the Respondent did not work, he was not entitled to any wages and as such the grant of back wages by the Labour Court as also by the High Court is wholly illegal, particularly, in view of the fact that no statement was made in his written statement filed before the Labour Court that he was not employed with any other concern. In any event, the Respondent was also not interested in a job. In support of the aforementioned contention, reliance has been placed on ***Kendriya Vidyalaya Sangathan*** **v.** ***S.C. Sharma*** [(2005) 2 SCC 363] and ***Allahabad Jal Sansthan*** **v.** ***Daya Shankar Rai*** [(2005) 5 SCC 124].

Mr. Bharat Sangal, learned counsel appearing on behalf of the Respondent, on the other hand, would submit that Section 2 (oo)(bb) of the Industrial Disputes Act, 1947 applies to the workmen working in the State of Uttar Pradesh as there does not exist any such provision in the U.P. Industrial Disputes Act. It was conceded that in view of the fact that establishment of the Appellant was sold out on 26.3.1993, the Respondent may not be entitled to an order of reinstatement with full back wages but having regard to the fact that his services were

wrongly terminated with effect from 1.4.1987, he would be entitled to back wages for the entire period from 1.4.1987 till 26.3.1993 besides the amount of compensation as envisaged under the U.P. Industrial Disputes Act.

Payment of back wages, Mr. Sangal would urge, is automatic consequent upon a declaration that the order of termination is unsustainable for any reason whatsoever and in particular when it is found to be in violation of the provisions of Section 6-N of the U.P. Industrial Disputes Act.

It is not in dispute that the Respondent was appointed on daily wages. He on his own showing was appointed in a project work to look after the construction of building.

The construction of the building, the learned Labour Court noticed, came to an end in the year 1988. The reference by the appropriate government pursuant to an industrial dispute raised by the Respondent was made in the year 1990.

A decision had been taken to close down the establishment of the Appellant as far back on 17.11.1990 wherefor a Government Order, GO No. 395/18 Niryat-3151/90 dated 17.11.1990 was issued. In its rejoinder affidavit filed before the High Court, it was contended that the said GO was implemented substantially and all the employees including the regular employees save and except some skeleton staff for winding up were retrenched. The Non Ferrous Mill of the Appellant was sold on 26.3.1993.

The Labour Court in its impugned award has not arrived at any finding that the order of appointment dated 8.1.1987 whereby the Respondent was appointed afresh in the Non Ferrous Rolling Mill was by way of unfair labour practice. It is, however, true that the Appellant relying on or on the basis of the aforementioned order dated 12/13.2.1987 in terms whereof the Respondent's services were approved for appointment in the said mill on minimum daily wages for the period 8.1.1987 till 31.3.1987 terminated his services without giving any notice or paying salary of one month in lieu thereof. No compensation in terms of Section 6-N of the U.P. Industrial Disputes Act was also paid.

Before adverting to the decisions relied upon by the learned counsel for the parties, we may observe that although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/ or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

It is not disputed that the Respondent did not plead that he after his purported retrenchment was wholly unemployed.

Section 6-N of the U.P. Industrial Disputes Act provides for service of one month notice as also payment of compensation to be computed in the manner laid down therein. Proviso to clause (a) of the said provision, however, excludes the requirement of giving such notice in the event the appointment was for a fixed tenure.

Section 25B(2)(a) of the Industrial Disputes Act raises a legal fiction that if a workman has actually worked under the employer continuously for a period of more than 240 days during a period of twelve calendar months preceding the date with reference to which calculation is to be made, although he is not in continuous service, he shall be deemed to be in continuous service under an employer for a period of one year.

The Labour Court although passed its award relying on or on the basis of the certificate issued by the Appellant, it did not hold that during the preceding 12 months, namely, for the period 1st April, 1986 to 31st March, 1987 the workman had completed 240 days of service. Unfortunately, neither the Labour Court nor the High Court considered this aspect of the matter in right perspective.

No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act.

Section 2(oo)(bb) of the Central Act as inserted by Industrial Disputes Amendment Act, 1984 is as under:

> ***"2. Definitions***- In this Act, unless there is anything repugnant in the subject or context,
>
> (oo) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include
>
> (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein;"

However, a similar provision has not been enacted in the U.P. Industrial Disputes Act.

The contention of the Appellant, as noticed hereinbefore, was that the Respondent having been appointed for a fixed period was not entitled to any compensation under the provisions of Section 6-N of the U.P. Industrial Disputes Act. But, in this connection our attention has been drawn to a 2-Judge Bench decision of this Court in ***Uttar Pradesh State Sugar Corporation Ltd.*** **v.** ***Om Prakash Upadhyay*** [2002 (1) LLJ 241: (2002) 10 SCC 89] wherein it was held that in view of Section 31(1) of Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the provisions of Section 2(oo)(bb) of the Central Industrial Disputes Act would not be applicable. In that view of the matter, although no notice was required to be service in view of the proviso to Clause (a) of Section 6-N of the U.P. Industrial Disputes Act, compensation therefor as provided for in Clause (b) was payable. But, it is not necessary for us to go into the correctness or otherwise of the said decision as it is not disputed that before the provisions of Section 6-N of the U.P. Industrial Disputes Act can be invoked, the concerned workman must work at least for 240 days during

a period of twelve calendar months preceding the date with reference to which calculation is to be made.

However, as the question as regard termination of service of the Respondent by the Appellant is not in issue, we would proceed on the basis that the services of the Respondent were terminated in violation of Section 6-N of the U.P. Industrial Disputes Act. The primary question, as noticed by us herein before, is as to whether even in such a situation the Respondent would be entitled to the entire back wages.

Before adverting to the said question in a bit more detail, let us consider the decisions relied upon by Mr. Sangal.

In ***Hindustan Tin Works Pvt. Ltd.*** **v.** ***Employees of Hindustan Tin Works Pvt. Ltd.*** [(1979) 1 SCR 563], this court merely held that the relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It, therefore, does not lay down a law in absolute terms to the effect that right to claim back wages must necessarily follow an order declaring that the termination of service is invalid in law.

In ***Hindustan Tin Works*** notice for retrenchment was issued *inter alia* for non-availability of raw material to utilize the full installed capacity, power shedding limiting the working of the unit to 5 days a week and the mounting loss which were found to be factually incorrect. The real reason for issuing such a notice was held to be "the annoyance felt by the management consequent upon the refusal of the workmen to agree to the terms of settlement contained in the draft dated 5th April, 1974".

Laws proverbial delay, it was urged therein, is a matter which should be kept in view having regard to the fact situation obtaining in each case and the conduct of the parties. Such a contention was raised on the ground that the company was suffering losses. The court analysed factual matrix obtaining therein to the effect that a sum of Rs. 2,80,000/- was required to be paid by way of back wages and an offer was made by way of settlement to pay 50% of the back wages observing:

> "Now, undoubtedly the appellant appears to have turned the corner. The industrial unit is looking up. It has started making profits. The workmen have already been reinstated and, therefore, they have started earning their wages. It may, however, be recalled that the appellant has still not cleared its accumulated loss. Keeping in view all the facts and circumstances of this case it would be appropriate to award 75% of the back wages to the workmen to be paid in two equal instalments."

It will, therefore, be seen that this Court itself, having regard to the factual matrix obtaining in the said case, directed payment of 75% of the back wages and that too in two equal instalments.

In ***Management of Panitole Tea Estate*** **v.** ***The Workmen*** [(1971) 3 SCR 774], a two-judge bench of this Court while considering the question as regard grant of relief or reinstatement, observed:

> The general rule of reinstatement in the absence of special circumstances was also recognised in the case of ***Workmen of Assam Match Co. Ltd.*** **v.** ***Presiding***

Officer, Labour Court, Assam and has again been affirmed recently in ***Tulsidas Paul*** **v.** ***Second Labour Court, W.B***. In ***Tulsidas Paul*** it has been emphasised that no hard and fast rule as to which circumstances would establish an exception to the general rule could be laid down and the Tribunal must in each case decide the question in a spirit of fairness and justice in keeping with the objectives of industrial adjudication.

In ***Surendra Kumar Verma*** **v.** ***Central Government Industrial Tribunal-cum-Labour Court, New Delhi*** [(1981) 1 SCR 789], this Court refused to go into the question as to whether termination of services of a workman in violation of the provisions of Section 25F is void ab initio or merely invalid or inoperative on the premise that semantic luxuries are misplaced in the interpretation of 'bread and butter' statutes. In that context, Chinnappa Reddy, J. observed:

> Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-`-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.

Yet again, no law in absolute terms had been laid down therein. The court proceeded on the basis that there may be situations where grant of full back wages would be inequitable. In the fact situation obtaining therein, the court, however was of the opinion that there was no impediment in the way of awarding the relief. It is interesting to note that Pathak, J., as His Lordship then was, however was of the view:

> "Ordinarily, a workman who has been retrenched in contravention of the law is entitled to reinstatement with full back wages and that principle yields only where the justice of the case in the light of the particular facts indicates the desirability of a different relief."

The expression 'ordinarily' must be understood given its due meaning. A useful reference in this behalf may be made to a 4-Judge Bench decision of this Court in ***Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed*** [(1976) 1 SCC 671] wherein it has been held:

> 35. The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.

In ***J.N. Srivastava*** **v.** ***Union of India*** [(1998) 9 SCC 559] again no law has been laid down in the fact situation obtaining therein. The court held that the workmen had all along been ready and willing to work, the plea of 'no work no pay' as prayed for should not be applied.

We may notice that in ***M.D., U.P. Warehousing Corpn.*** **v.** ***Vijay Narayan Vajpayee*** [(1980) 3 SCC 459] and Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawan Ltd. although an observation had been made to the effect that in a case where a breach of the provisions of Section 25-F has taken place, the workmen cannot be denied back wages to any extent, no law, which may be considered to be binding precedent has been laid down therein.

In ***P.G.I. of Medical Education & Research, Chandigarh*** **v.** ***Raj Kumar*** [(2001) 2 SCC 54], Banerjee, J., on the other hand, was of the opinion:

> The learned counsel appearing for the respondents, however, placed strong reliance on a later decision of this Court in ***PGI of M.E. & Research Chandigarh*** **v.** ***Vinod Krishan Sharma*** wherein this Court directed payment of balance of 60% of the back wages to the respondent within a specified period of time. It may well be noted that the decision in Soma case has been noticed by this Court in ***Vinod Sharma*** case wherein this Court apropos the decision in Soma case observed: "A mere look at the said judgment shows that it was rendered in the peculiar facts and circumstances of the case. It is, therefore, obvious that the said decision which centred round its own facts cannot be a precedent in the present case which is based on its own facts." We also record our concurrence with the observations made therein. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this Court in Hindustan Tin Works (P) Ltd. be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only.

The decisions of this Court strongly relied upon by Mr. Sangal, therefore, do not speak in one voice that the industrial court or for that matter the High Court or this Court would not have any discretionary role to play in the matter of moulding the relief. If a judgment is rendered merely having regard to the fact situation obtaining therein, the same, in our opinion, could not be a declaration of law within the meaning of Article 141 of the Constitution of India.

It is one thing to say that the court interprets a provision of a statute and lays down a law, but it is another thing to say that the courts although exercise plenary jurisdiction will have no discretionary power at all in the matter of moulding the relief or otherwise give any such reliefs, as the parties may be found to be entitled to in equity and justice. If that be so, the court's function as court of justice would be totally impaired. Discretionary jurisdiction in a court need not be conferred always by a statute.

Order VII, Rule 7 of the Code of Civil Procedure confers power upon the court to mould relief in a given situation. The provisions of the Code of Civil Procedure are applicable to the proceedings under the Industrial Disputes Act. Section 11-A of the Industrial Disputes Act empowers the Labour Court, Tribunal and National Tribunal to give appropriate relief in case of discharge or dismissal of workmen.

The meaning of the word 'discharge' is somewhat vague. In this case, we have noticed that one of the contentions of the Appellant was that the services of the Respondent had been terminated in terms of its order dated 12/13.2.1987 whereby and whereunder the services of the Respondent herein was approved till 31.3.1987.

The Industrial Disputes Act was principally established for the purpose of pre-empting industrial tensions, providing the mechanics of dispute-resolutions and setting up the necessary infrastructure so that the energies of partners in production may not be dissipated in counter-productive battles and assurance of industrial justice may create a climate of goodwill. [See ***LIC* v. *D.J. Bahadur*** (1981) 1 SCC 315]

Industrial Courts while adjudicating on disputes between the management and the workmen, therefore, must take such decisions which would be in consonance with the purpose the law seeks to achieve. When justice is the buzzword in the matter of adjudication under the Industrial Disputes Act, it would be wholly improper on the part of the superior courts to make them apply the cold letter of the statutes to act mechanically. Rendition of justice would bring within its purview giving a person what is due to him and not what can be given to him in law.

A person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an industrial court shall lose much of its significance.

The changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the government in the wake of prevailing market economy, globalization, privatization and outsourcing is evident.

In ***Hindustan Motors Ltd.* v. *Tapan Kumar Bhattacharya*** [(2002) 6 SCC 41], this Court noticed **Raj Kumar** and ***Hindustan Tin Works*** but held:

> As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or the High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages, we are of

> the view that in the context of the facts of this particular case including the vicissitudes of long-drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement...

The Court, therefore, emphasized that while granting relief application of mind on the part of the industrial court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.

The said decisions were, however, distinguished in ***Mohan Lal* v. *Management of M/s. Bharat Electronics Ltd.*** [(1981) 3 SCC 225]. Desai, J. was of the opinion:

> 17. But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the courts in the field of social justice and we do not propose to depart in this case.

In ***Allahabad Jal Sansthan* v. *Daya Shankar Rai*** [(2005) 5 SCC 124], in which one of us was a party, this Court had taken into consideration most of the decisions relied upon by Mr. Sangal and observed:

> A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that Respondent 1 herein was appointed on an ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24-1-1987. Respondent 1 had filed a written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned counsel for the appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. In the instant case, the respondent herein had been reinstated from 27-2-2001.

It was further stated:

> 16. We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realised that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.

Yet again in ***General Manager, Haryana Roadways*** **v.** ***Rudhan Singh*** [JT 2005 (6) SC 137 : (2005) 5 SCC 591], a 3-Judge Bench of this Court in a case where the workman had worked for a short period which was less than a year and having regard to his educational qualification, etc. denied back wages although the termination of service was held to have been made in violation of Section 25F of the Industrial Disputes Act, 1947 stating:

> A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year.

The only question is whether the Respondent would be entitled to back wages from the date of his termination of service till the aforementioned date. The decision to close down the establishment by the State of Uttar Pradesh like other public sector organizations had been taken as far back on 17.11.1990 wherefor a GO had been issued. It had further been averred, which has been noticed hereinbefore, that the said GO has substantially been implemented. In this view of the matter, we are of the opinion that interest of justice would be subserved if the back wages payable to the Respondent for the period 1.4.1987 to 26.3.1993 is confined to 25% of the total back wages payable during the said period.

The judgments and orders of the Labour Court and the High Court are set aside and it is directed that the Respondent herein shall be entitled to 25% back wages of the total back wages payable during the aforesaid period and compensation payable in terms of Section 6-N of the U.P. Industrial Disputes Act. If, however, any sum has been paid by the Appellant herein, the same shall be adjusted from the amount payable in terms of this judgment.

For the reasons aforementioned, the appeal is allowed in part and to the extent mentioned hereinbefore. However, there shall be no order as to costs.

THE END