Definition of "INDUSTRY" Amplified

BA
0091

62

140

TEXT
OF
SUPREME COURT JUDGEMENT
OF FEBRUARY 21, 1978

- Political decision of support and defence of workers' rights.
- Suggestions:
  - Annex Bonus – Industries
  - More production – implementation of 1974 – retirement benefits.
  - C.D.S. withdrawal
  - Railway emp:
  - Defence of Public Sector.

- Annex Bonus:

Resistance from employers – Some State Govt. Some settlements but more than 50% – closure etc. Demand Ordinance. P.M.'s assurance. – Committee. Industries Committees – NTC patients. Public sector yet not taken up. – Production for up (except NTC)

Problem of over production.

Private sector employers strike continues in certain sectors. Imposition of various concessions re: excise duty, credit, free sale quota increase, high profits in 1974 & also in 1975.

- C.D.S. in respect of D.A. dropped. Promised to lower the marginal but yet it continues.
- Railway employees taking back slow – latest after S.E. Railway court case
-
- Some Agreements, & re-groupings.
- Conferences – Text. Eng. P.C. – how enforced in the.
- Problem in Employment
  (a) Bonus (b), Annual Paid. (c) Retire age.
- Accidents.
- Unity.

Signature campaign

- Decision etc
- Deccan [illegible]
- leaflet.
- Telegram P.M. [illegible]

- Role ISTU & HMS
- " CITU - DMK.

- Bihar - [illegible] Nagar [illegible]
- Orissa Paradip [illegible]. SHAHEED
  Workers arrested [illegible] followed
  29 arrested [illegible] 151/[illegible]
  not released
  Hazy Board
  Hundreds [illegible] in [illegible] strike
- Kalapani. [illegible] Strike - Suspended (arrested)

- Tamilnadu. INTUC & HMS [illegible]
  SHOWED sympathy
  INTUC [illegible]
  Arrests & released

- Apex Body / National Industrial Committees
- CDS.
- Railway Comp.
- Lay off. retrenchment - closure.
- Ballot
- Defence of Public Sector.
- Female Asian TU Seminar — Population Seminar · Port + Dock.
- Agreement - Steel Industry
- State Govt. Comp: Retirement 50 years / 25 yrs service.
- Conference Textile / Metal & Engineering
  21-23 Nov. 17-19th Nov.
- Bonus ordinance
- Workers' Participation in Management
- Accidents.
- J+K. Cement Workers
- South Eastern RS: Conference Bhilai

- Re-opening Chunar Quartzite mine
- Bata Settlement
- P.D.A. Govt. Comp:
  - Equal pay for equal work.
  - India Aluminium in Hirakud
  - Wages Agriculture workers
  - Singareni Collieries
  - Granite mine - NAGDA oil

—— Mid-term meeting class.

—— 6th Session Hungary Stalin

-12-

The department held several formal & informal meetings to discuss the issues of State Govt. employees, Banks & LIC. Has also held meetings at the time of S.C. meeting of AITUC to discuss important issues before the Council viz Bonus, Workers Participation in Industry etc.

copy: Bank-Govt. emp
- LIC - 5th Jan
- Bank - 19.8.75 & again 5 & 7 in
- Bonus circular 30.9.75
- S.C. meeting 10/7/8.XI.75 -
  (AITUC President called)
  Suspension Bonus.
  Workers Participation

in contrast with the attitude of USA and other capitalist states. This fact needs to be taken to the working class not only in Mines but elsewhere also.

Unity — T.U. movement

I Since ---- raised. Replacement as Secretary of National Council of Staff Side J.C.M. of Shri J.P. Chaube by Shri O.P. Gupta has been a setback to AIRF & its policies.

II. The national ---- & Bonus.

III. At local ---- measures.

Unity with INTUC was taken a step forward when we invited President Shri Bhagwati & Gen. Secy. Shri Ramanujam to address the G.C. meeting of the AITUC. Shri Ramanujam had to leave that very day. Shri Bhagwati came & addressed the General Council. Identical views were expressed on a number of issues. INTUC invited Com. Dange to attend ~~their~~ inaugural session of their General Council meeting, which was addressed by the Prime Minister.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEALS NOS. 753-754(I) OF 1975 etc. etc.

The Bangalore Water Supply & Sewerage Board etc. etc. ..... Appellants

Versus

A Rajappa & Ors. etc. etc. ..... Respondents

J U D G M E N T

KRISHNA IYER. J:

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 industrialization 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 Safdar Jung, (1) 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.

Legalese and logomachy have the genius to inject mystique into common words, distorting the laity in effect from the cult of law. What is the common worker or ordinary employer to do if he is bewildered by a definitional fall more and is unsure whether his enterprise - say, a hospital, a university, a library, a service club, a local body, a research institute, a pinjrapole, a chamber of commerce, a Gandhi Ashram- is an industry at all? Manuel meaning is nervous of acceptance in court, where the meaning of meanings is lost in uncertain ambition and cases have even cancelled each other out while reading meaning.

> "I do not think, " said Diplock L.J; that anywhere, except in a court of law, it would be argued with gravity that a Dutch barn or grain and fodder stores or any ordinary farm buildings are properly described as repositories. A Gloucestershire farmer would say they were farm

---

(1) Management of Safdar Jung Hospital, New Delhi, V. Kuldip Singh Sethi (1971) 1 SCR. 177.)

buildings and would laugh at their being called ' repositories". " In the same spirit, Stamp J. rejected the argument that the carrying on of the business of a crematorium involved the " subjection of goods or materials to any process" within section 271(1)(c) of the Income Tax Act 1952 as a distortion of the English language--- I protest against subjecting the English language, and more particularly simple English phrase, to this kind of process of philology and semasiology." (2)

Sections is anathema for law affecting the common man in the commerce of life, and so the starting point for our discussion is the determination to go by the plain, not the possible, sense of the words used in the definition, informed by the context and purpose of the statute, illumined by its scheme and setting and conceptually coloured by what is an industry at the current developmental stage in our country. In our system of precedents our endeavour must be, as urged by counsel, to reconcile prior pronouncements, if possible, and to reconsider the question altogether, if necessary. There are no absolutes in law since life, which it serves, is relative. What is an industry in America or the Soviet Union may not be one in India and even in our Country what was not an industry decades ago may well be one now. Our judgment here has no pontifical flavour but seeks to serve the future hour till changes in the law or in industrial culture occur.

Law, especially industrial law, which regulates the rights and remedies of the working class, unfamiliar with the sophistications of definitions and shower of decrees 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 Sec. 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.

Though the tailoring of a definition is the sole forensic job in this batch of appeals, dependent on which, perhaps, a few thousand other cases await decision, the cyclonomic semantics of the simple word 'industry' and the judicial gloss on it in a catena of cases, have led to an avoidable glut of labour litigation where speedy

(2) Maxwell "The Interpretation of Statutes" 12th Edn. by P. St. J. Langan pp. 81-82.

finality and working criteria are most desirable. And this delay in disposal of thousands of disputes and consequent partial paralysis in the industrial life is partly blameable on the absence of a mechanism of communication between the court and the law-making chambers.

The great American judge, Justice Cardozo, while he was Chief Justice of New York Supreme Court, made this point:

> "The Courts are not helped as they could and ought to be in the adaptation of law to justice. The reason they are not helped is because there is no one whose business it is to give warning that help is needed... We must have a courier who will carry the tidings of distress..... Today courts and legislature work in separation and aloofness. The penalty is paid both in the wasted effort of production and in the lowered quality of the product. On the one side, the judges, left to fight against anachronism and injustice by the methods of judge-made law, are distracted by the conflicting promptings of justice and logic, of consistency and mercy, and the output of their labors bears the tokens of the strain. On the other side, the legislature, informed only casually and intermittently of the needs and problems of the courts, without expert or responsible or disinterested or systematic advice as to the workings of one rule or another, patches the fabric here and there, and mars often when it would mend. Legislature and courts move on in proud and silent isolation. Some agency must be found to mediate between them."

The grave disquiet about arrears in courts must be accompanied by deeper insights into newer methodology than collection of statistics and minor reforms. Appreciating the urgency of quick justice, a component of social justice, as a priority item on the agenda of law reforms and suspecting public unawareness of some essential aspects of the problem, we make these painful observations.

This obiter exercise is in discharge of the court's obligation to inform the community in our developing country where to look for the faults in the legal order and how to take meaningful corrective measures. The courts too have a constituency the nation- and a manifesto-- the Constitution. That is the validation of this divagation.

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 flabour, 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.

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 speed and alert speed by the legislature, litigation which is the besetting sin of industrial life could well have been avoided to 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.

Counsel on both sides have chosen to rely on Gnfdor Jung 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."

"..... 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 the Parliament does not act, this Court may have to illumine the twilight area of law and help the industrial community carry on smoothly."

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. Rules 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 thought-ways, 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 Banerjee, decided 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.

Another sobering sign. In a world of relativity where law and life interlace, a search for absolutes is a self-condemned exercise. Legal concepts, ergo, are relativist, and to miss this rule of change and developmental stage is to interpret oneself into error.

Yet a third signpost. The functional focus of this industrial legislation and the social perspective of Part IV of the Paramount Law drive us to hold that the dual goals of the Act are contentment of workers and peace in the industry and judicial interpretation should be geared to their fulfilment, not their frustration. A worker-oriented statute must receive a construction where, conceptually, the 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.

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 a organised 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 expressed 'undertaking' cannot be torn off the words whose company it keeps. If birds of a feather flock together and nosciture 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 'undetaking' in Section 2(j) to mean meditation or mushaira which are spiritual and aesthetic undertakings. Wide meanings must fall in line and discordance must be excluded from a sound system. From Banerjee to Safdar Jung and beyond, this limited criterion has passed muster and we see no reason, after all the marathon of argument, to shift from this position.

Likewise, an 'industry' cannot exist without co-operative endeavour between employer and employee. No employer, no industry; no employee, no industry - nor 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.

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 relatities and assigns values to them, jurisprudence may reach out to such collective good. Today, not tomorrow, is the first charge of pragmatic law of West in heritage. So we are confined to material , not ethereal end products.

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. I hold these triple ingredients to be unexceptionable.

The relevant constitutional entry speaks of industrial and labour disputes (Entry 22 List III Sch.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 out-breaks 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.

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 employees, 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 reductio ad absurdem 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 legilsativ bodies." (See Constitution of the United States of America) Corwin p). Even so, this legislation has something to do with social justice between the 'haves' and the 'have-nots', and naive, fugitive and illogical cut-backs on the import of 'industry' may to injutice 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 managements 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 alsoits 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 somantic 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 instrumentalities, 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.

Lord Denning has stated the Judge's task in reading the meaning of enactments:

> "The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were ..... He must set to work in the constructive task of fining the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature..... A Judge should ask himself the question , now, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."
>
> The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited."
>
> (The Industrial Disputes-Maharastra, Vol.I pp 44 & 45).

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 B.N.Banarji vs. P.R.Mukherjee & Others (1954(4) S.C.R.302). But before setting sail, let us map out briefly the range of dispute around the definition. Lord Denning in Automobile Proprietary Ltd. observed:-

> "It is true that 'the industry' is defined; but a definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realising that the function of a definition is to give precision and certainty to a word or phrase which

would otherwise be vague and uncertain but not to contradict it or supplant it altogether."

(Hotel and Catering Industry Training Board vs- Automobile Proprietary Ltd. (1968) 1 W L R. 1526 at 1530).

A definition is ordinarily the crystallisation of a legal concept promoting precision and rounding off blurred edges but, alas, the definition in S.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.

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 (42nd 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 construe-tion is casuistry.

A counter-critic, on theother 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.

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 non-profit-no-loss rule, statutorily or otherwise fastened, fall within the definition in Sec.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 ineliminable ingredient of 'industry' that it should be plied with a commercial object?

2(a) Should co-operation by an employer and employee be disregarded so far as it relates to the basic services 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 Sec.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 cutback 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 right-conscious ?

6. As the provision now stands, is it scientific to define 'industry' based on the nature-the dominent 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?

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, and ideally 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 Parkunde, who argued at effective, illuminating length, as well as Dr.Singhvi and Shri A.K.Sen who briefly and tellingly supplemented, did not high the fact that the law is in Buser 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, armed with lexical wisdom or reinforced by vintage judicial thought from Australia. Banerji we take as good, and, anchored on its authority, we will examine later decisions to establish that the law on the firm principles gathered therefrom, rejecting erratic excursions. To dip every flower and change every hour is not realism but romance which must not enchant the court. Indeed, Shri Justice Chandrasekhara Iyer, speaking for a unanimous bench, has sketched the guidelines perspicuously in, 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 bashings rather than the basic decision. Therefore, our task is not to supplent the ratio of Banerji but to straighten and strengthen it in its application, away from different deviations and aberrations.

Banerji.

The Budge Budge Municipality dismissed two employees whose dispute was sponsored by the Union. The award of the Industrial Tribunal directed reinstatement 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.

A panoramic view of the statute and its jurisprudential bearings has been projected there and the essentials of an industry dissected. The definitionsof employer (Sec.2(g), industry (Sec.2(j), industrial dispute (Sec.2(k) workman (Sec.2(s)) are-

.....

~~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 enterpris 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 Chandrasekhere 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 applied even to agriculture, harticulture, pisciculturs 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 commonl 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 Govt. and its secretariat, of the members of the medical profession working in a hospital. It would be regarded as absured to think so; at any rate the leyman 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 adjustmen 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 anormously wider concept so as to take in various and varied forms of industry, so that disputs arising in connection with them might be settled quickly without much dislocation and disorganisation of the needs of society and in a manner more adopted to conciliation and settlement then 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 fromthe stand point of status

....

than of contract. With such an approach, the numberous problems which 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, Board and Tribunals for the effective settlement of disputes."(emphasis added).

The dynamics of industrial law, even if incongrucus with polular understanding, is this first proposition we derive from Banerjee:

> "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."

The second, through cases, 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.

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.

Let us get down to the factual 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 'workmen' taken 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 manufactur on the other, and though therefore it might mean only a busin-ss or trade undertaking, still it must be remembered that if that w- 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, servic-, employment , or industrial occupation of 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 und-rstood 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 referre. to 'public' utility servic-' (Sec.2(n)) and argued.

> "A public utility servic- such as railways, telephones and the supply ofpower, light or water to the public may b- 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 disputes 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 Gov-rnment shall make a reference under the sub-section. If the public utility servic- 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 industy".

(emphasis added)

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:

"Some of these functions may appertain to or 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 employ the substitution ofpublic authorities in the place of private employers and to limit as the motive of profit-making as far as possible. The levy of taxes for the maintenance of the service 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 an industry though it is carried on with the aid of taxation, and no immediate material gain by way of profit is envisaged."

(emphasis added)

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

Another argument pertinent to our discussion is the sweep of the expression 'trade'. The Court refers, with approval, to Lord Wright in Bolton Corporation (1943 A.C. 166) where the Law Lord had

....

observed:

> "Indeed 'trade' is not only in the etymological or dictionary sense, but in the legal usage, a term of the widest scope. It is connected originally with the word 'tread' and indicates a way of lifeor an occupation. In ordinary usage it may mean the occupation of a small shopkeeper equally with that of a commercial magnate. If may also mean a skilled craft. It is true that it is often used in contrast with a profession. A Professional worker would not ordinarily be called a tradesman, but the word 'trade' is used in the widest application to the appellation'trade Unions'. Professions have their trade unions. It is also used in the Trade Boards Act to include industrial undertakings. I see no reason to exclude from the operation of the Industrial Courts Act the activities of local authorities, even without taking into account the fact that these authorities now carry on in most cases important industrial undertakings. The order expressly states in its definition section that 'tade' or 'industry' includes the performance of its functions by a 'public Local Authority". It is true that these words are used in part III, which deals with 'recognized terms and conditions of employment', and in part IV, which deals with 'departures from trade practices' in 'any industry or undertaking' and not in Part I, which deals with 'national arbitration' and is the part material in this case, but I take them as illustrating what modern conditions involve the idea that the functions of local authorities may come under the expression 'trade or industry'. I think the same may be said of the Industrial Courts Act and of Reg.58-AA, in both of which the word 'trade' is used in the very wide connotation which it bears in the modern legislation dealing with conditions of employment, particularly in relation to matters of collective bargaining and the like". (emphasis added).

In short, 'tade' 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 quo non of 'industry', functionally or definitionally. For this, Powers J, in Federated Municipal and Shire Employees'Union of Australia. vs- Malbourne Corporation (26 C.L.R. 508) 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 respondent 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 Arbitration Act or Constitution if carried out by municipal corporations. I cannot accept that view." (emphasis added).

The negation of profit motive, so telling [illegible] text against 'industry', is also [illegible] this quota.

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 ultimately be

...

statutory 'industry' . The popular limitations on the concept of industry do not amputate the ambit of legislative generosity in Sec.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.

The limiting role of Banarji 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 annotation of other expressions like 'calling' and get to grips with the specific organisations which call for identification in the several appeals before us.

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 : <u>branches of work</u> that can be said to be analogous to the carrying out of a <u>'trade or business.</u> The same judgment has negatived the necessity for profit-motive and included charity impiedly, 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 with trade or business is in the ... 'carrying out' of the economic adventure. So, the parity is in the <u>modus operandi</u>, 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 labar 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 kernal of the decision. An activity-oriented, not motive-based, analysis.

The landmark Australian case in 26 C.L.R. 508 (Melbourne Corporation), which was heavily relied on in Benarji may engage us. That ruling contains dicta, early in the century, which make Indian forensic fabianists, sixty years after in the 'socialist' Republic, blush. That apart, the discussion in the leading judgments dealing with 'industry' from a constitutional angle but relying on statuts similar to ours, is instructive. For instance, consider the promptings of profit as a condition of 'industry'; Higgins 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 Portlend's whim, or the labourers who build (for pay) a tower of Babel or a Pyremid, 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 effecting the workers are within the sphere of dispute. For instance, at P.70 (par. 175(4)(a) one of the competing contentions is thus stated:-"Long hours proceed from the competition of employer with employer in the same trade. Employers ought to be prevented from competing in this way at the expense of their workmen." (emphasis added.) As a fact, in a later year, Lord James of Hereford, in an award, held that one employer in a certain trade must conform to the practice of others. What must be borne steadily in mind, as evidenced by the nature of the claims made, is that the object of obtaining a large share of the product of the industry and of exercising a voice as to the general conditions under which it shall be carried on (par.100) covers all means direct and incidental without which the main object cannot be fully or effectively attained. Some of these will be particularized but in the meantime it should be said that they will show in themselves, and from the character of the disputants this will be confirmed that so long as the operations are of capital and labour in co-operation for the satisfaction of material human needs, the objects and demands of labour are the same whether the result of the operations be money or money's-worth. The inevitable condusion, as it seems to us, from this is that in 1894 it was well understood that "trade disputes", which at one time had a limited scope of action, without altering their inherent and essential nature, so developed as to be recognised better under the name of "industrial disputes" or "labour disputes," and to be more and more founded on the 'practical' view that human labour was not a mere aspect of capital but

was a co-operating agency of equal dignity-a working partner- and entitled to consideration as such".

The same two judges choose to impart a wide construction to the word 'industry', for they ask: "How can we, conformably to recognised rules of legal construction, attempt to limit, in an instrument of self-government for this Continent, the simple and comprehensive words "industrial disputes" by any apprehension of what we might imagine would be the effect of a full literal construction, or by conjecturing what was in the minds of the framers of the Constitution, or by the forms industrial disputes have more recently assumed? "Industrial warfare" is no mere figure of speech. It is not the mere phrase of theorists. It is recognised by the law as the correct description of internal conflicts in industrial matters. It was adopted by Lord Loreburn L.C. in Conway v. Wade (A) (1909) A.C. at p.511). Strikes and lock-outs are by him correctly described as "weapons". These arguments hold good for the Indian industrial statute, and so, Sec.2(j) must receive comprehensive literal force, limited only by some canon or criterion. Of such criterion, in the monarchical vocabulary of English jurisprudence, is Crown exemption, re-incarnated as inalienable functions of constitutional Republic as No government, no order; no order, no law; no rule of law, no industrial relations. So, core functions of the State are paramount and paramountcy is paramountcy. But this doctrinal exemption is not expensionist but strictly narrowed to necessitous functions. Isaacs and Rich JJ., dwell on this topic and, after quoting Lord Halsbury's test of inalienable functions of a Constitutional government, state: "Here we have the discrimination of Crown exemption. If a municipality either (1897) 1 Q.B., at pp.70-71) is legally empowered to perform and does perform any function whatever for the crown, or (1897) 1 Q.B., at p.71) is lawfully empowered to perform and does perform any function which constitutionally is inalienably a Crown function-as, for instance, the administration of justice- the municipality is in law presumed to represent the Crown, and the exemption applies. Otherwise, it is outside that exemption, and, if impliedly exempted at all, some other principle must be resorted to. Road making and maintenance of streets in the municipality is not within either proposition". (Italics supplied)

.....

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

A chronological survey of post-Banerji decisionsof thisCourt, with accent on the juristic contribution registered by them, may be methodical. Thereafter, cases in alien jurisdictions and defivation of guidelines may be attempted. Even here, we may warn curselves 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 leavesno option. Forensic inflation of the sense of words shall not lead to an adaptational break-down 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 chemistry. A functional focus and social control desideratum must be in the mind's eye of the Judge.

The two landmark cases., The Corporation of the City of Nagpur vs- Its Employees (1960) 2 SCR 942) and State of Bombay and others vs The Hospital Mazdoor Sabha & Ors. (1960) 2 SCR 866) may now be analysed in the light of what we have just said. Filing the gaps in the Banerji decision and the authoritative connotation of the fluid phrase 'analogous to trade and business' were attempted in this twin decisions. To be analogous is toresemble 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.

Sri Justice SubbaRao, with uninhibited logic, chases this though and reaches certain tests in Nagpur Municipality, speaking for a unanimousbench. 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 employeesin 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 rulingsof this Court, the legume 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 vide and illumines the expression 'analogous to trade or business'. although it comes a few days after Hospital Mazdoor Sabha decided by the same bench.

To be sure of our approach on awider basis let us cast a glance at internationally recognised concept 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 No.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 pre-judicing their rights or status in any way."

Thus, it is well-recognised that public servants in key sectors of Administration stand out of the industrial sector. The committee of Expertsof the ILO has something to say about the carving out of the public servants from the general category.

Incidentally, it may be useful to note certain clear statements made by ILO on the concept of industr workmen and industrial disputes 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 ILO:

> "2. Civil Servants andother workers in the employ of the State.

..

250.

Convention No.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.

141st Report, Case No.729, para 15.

251. Convention No.98, which mainly concerns collective bargaining, permits (Article 6) the exclusion of "public servant 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 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, accordingly 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 independant public corporations.

116th Report, Case No.598, Para 377;

121st Report, Case No. 635, Para 81;

143rd Report, Case No. 764, Para 67;

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 No. 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.

255. The Committee has pointed out that Convention No. 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 telecommunications services.

139th Report, Case No. 725, Para 273.

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 No. 98, the rule contained in Article 4 of the convention concerning collective bargaining should be applied to them.

116th Report, Case No. 598, Paras. 375-376.

This devegetion was calculated only to emphasis 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 (supra). 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 Bangia Borough Municipality (1957 S.C.R. 85) held. Even so the scope of 'industry' was investigated by the Bench in the City of Nagpur which affirmed Dewanji and Bangia. 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 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 ever-inclusive....may be impractical and so while accepting the enlargement of meaning by the device of inclusive definition the Court cautioned.

"But such a wide meaning appears to overreach the object for which theAct 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."

After referring to the rule in Heydon's case, Subba Rao, J. proceeded to outline the ambit of industry thus:

> "The word "employers" in cl.(a) and the word 'employees' in cl.(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.The long title of the Act as well as its preamble show 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 thepassing 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 cooperative 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 service which do not depend upon the employment of a labour force."

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

The Court proceeded to carve out the negative factors which, notwithstanding the literal width of the language of the definition, must, for certain 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 inapplicability of relying on the doctrine of regal powers. That was, reference, in this context, to the Crown's liability in tort and

LAS

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 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.

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 exdusion of every one of the host of employees engaged by government in departments falling under general rubrice 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.

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 otheractivities with trade or business'. Obviously, non-trade operations were in many cases 'industry'. Relying on the 'Fabricated Engine Drivers (1913, Vol. 16, C.L.R. 245) Subba Rao, J., observed :

> "It is manifes from this decision that even activities of municipality which cannot be described as trading activities can be the subject-matter of an industrial disputes."

The true test, according to the learned Judge, was concisely expressed by Issacs J., inhis dissenting judgment in the Federated State School Teachers Association of Australia Vs. State of Victoria (1929) 41 C.L.R . 569);

> The material question is : What isthe nature of the actual function assumed- is it a service that the State could have left to private enterprise, and if so fulfilled, would such a dispute be 'industrial' ?".

Thus the nature of actual function and of the pattern of organised activity is decisive. We will revert to this aspect a little later.

It is useful to remember that the Court rejected the test attempted by counsel in the case:

> "It is said that unless where is quid pro quo for the service. It cannot be an industry. This is the same argument, nauely, 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 can not be industry. Indeed, the signal service vendered by the Corporation of Nagpur is to dispel the idea of profit-making. Relying on Australian cases which held that profit-making may be important from the income-tax point of view but irrevelant from an industrial dispute point of view, the Court approved of a critical passage in the dissenting judgement of Issacs J., in the School Teachers' Association case (supra):

> "The contention sounds like an echo from the dark ages of industry and political economy ....Such disputes are not simply a claim to share the material wealth..." 'Hamstery considerations for service is, therefore, not an essential characteristice of industry in a modern State."

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 on the intenti to make profit is notan essential part of the legal definition of a trade on business: and payment or profit does not constitute a trade or business that which would not otherwise be such."
> (Halsbury's Laws of England, Third Edition , Vol.38,P.11)

Does the hedge of industrialism, broadly understood, banish, from its fold, educations 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 case. (1964)(2)SCR 702 But since Subba Rao, J. has supportively cited

Issacs J. In School Teachers Association(supra) 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."

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

> "The theory was that society is industrial 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 thatnature. Consequently , say the employers, "education" not being "wealth" in that sense, there never can be an'industrial dispute" between employers andemployed 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 contentionis radically unsouund for two great reasons. It erroneously conevies the object of national industrial organisation 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 comdey, or a ride in a tramcar or motor-bus, piloting a ship, lighting a lump or showing a moving picture is more "material" as wealth then instruction, either cultural or vocational ? Indeed, to

take one instance, a workman who travels in a tram-car a mile from his home to his factory is not 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 manufactures of intoxicants and producers of degrading literature and pictures, because those 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 bought to say "Pretty Polly" and so 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 or 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."

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.

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 some 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 45,819, and in 1924 there were seventeen unions with a membership of 194,546. 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."

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.

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

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 varifarm 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 No. 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."

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. 1. 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 qubits of the first and second parts of Sec. 2(j). Both read together and each viewed from the angle of employer or employee and applied in the 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.

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 :

> "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 recognises 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."

By these tokens, which find reason 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 predominently covered by the definition of "industry" it would be illogical to exclude the tax because 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.

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 scavanging 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."

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."

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 behind it and the other is governed by terms of contracts."

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

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 (j) is accepted but it expells essential 'sovereign activities' from its scope.

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

> "This group serves as a clinical training group for students of the Grant Medical College run and managed by the appellant for imparting medical sciences leading to the Degrees of Bachelor of Medicine and Bachelor of Surgery of the Bombay University as well as various Post-Graduate qualifications of the said University and the College of Physicians and Surgeons, Bombay; the group is thus run and managed by the appellant to provide medical relief and to promote the health of the people of Bombay".

And yet the holding was that it was an industry. Medical education, without mincing words, is 'industry'. It has no vulgarising import at all since the term 'industry' is a technical one for the purpose of the Act, even as a master-piece of painting is priceless are but is 'goods' under the Sales Tax Law, without any philistinic import, Law abstracts certain attributes of persons of things and assigns juridical values without any pejorativ connotation about other aspects. The Court admonishes that:

> "Industrial adjudication has necessarily to be aware of the current of socio-enconomic thought ground; it must recog nise that in the modern welfare State healthy industrial relations are a matter of paramount importance and its essential function is to assist the State by helping a solution of industrial disputes which constitute a distinct and persistent phenomenon of modernindustrialised States. In attempting to solve industrial disputes industrial adjudication does not and should not adopt a doctrinnaire approach. It must evolve some working principles and should generally avoid forumulating or adopting abstract generalisations. Nevertheless it cannot harp back to old age notions about the relations between employer and employee or to the dottrine of *laisses faire* which then governed the regulation of the said relations That is why, we think in construing the wide words used in Section 2 (j) it would be erroneous to attach undue importance to attributes associated with business or trade in the popular mind in days [illegible]"

> "Issacs J. has uttered a note of caution that in dealing with industrial disputes industrial adjudicators must be conversant with the current knowledge on the subject and they should not ignore the constant currents of life around them for otherwise it would introduce a serious infirmity in their approach. Dealing with the general characteristics of industrial enterprises the learned Judge observed that they contribute more or less to the general welfare of the community".

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 for 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 Sec. 2(rr),"workman" by S.2(s), and of "employer" by s.2(g). Besides the definition of a public utility service prescribed by s.2(m) is very significant. One has merely to glance at the six categories of public utility service mentioned by s. 2 (m) to realise that the rule of construction on which the appellant relies is inapplicable in interpreting the definition prescribed by s. 2 (37)."

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

> "..... as 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 service 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 cooperation 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

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

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 Solicitor's case (1962 Supp. (3) S.C.R, 157). 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 over-ruling 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 for the purpose of rendering material service or for the PURPOSE OF PRODUCTIONS. It would be realised that the concept or 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 indstry 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."

> 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 Sec. 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)

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 :

> "..... though 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 s. 2 (j); and that no doubt is a somewhat difficult problem to decide."

The second reason for exoneration is qualifative. "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 of his employers 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)".

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 mass of chores, is direct ? A battala may be lost if winter wear were shoddy. Is the army tailor a direct contributory?

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.

Indeed, Hidayatullah, C.J. in Gymkhana Club Employees Union(1966(1) S.C.R. 742) scouted the argument about direct nexus, making specific reference to the Solicitors' case:

> ".....The 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, Hidyeltyllah, 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 existance 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".

Although Gajendragadkar J. in Solicitor's case 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 (supra) 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 maid who collects flowers and places a beautiful bunch in a

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 or liberal profession, for that sole reason, can self-exclude himself from operation of the Act.

The professional immunity from labour's demand for social justice because learned professions have ahalo 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 their's 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.

Sociological critics have tried to demythologise the learned professions. Perhaps they have exaggerated. Still it is there. The politics of skill, not service of the people, is the current orientation, according to a recent book on 'Professions for the People'.

> "The English professions in the eighteenth century were an acceptable successor to the feudal ideal of landed property as a means of earning a living. Like landed property, a professional "competence" conveniently "broke the direct connection between work and income ..."(Reader, 1966, p. 3) for the gentryman. A professional career provided effects, aristocratic, protective coloration, and at the same time enabled one to make a considerable sum of money without sullying his hands with a "job" or "trade". One could carry on commerce by sleight of hand while donning the vestments of professional altruism. To boot, one could also work without appearing to derive income directly from it. As Reader explains :
>
> > "The whole subject of payment.... seems to have caused professional men acute embarrassment, making them take refuge in elaborate concealment, fiction, and artifice. The root of the matter appears to lie in the feeling that it was not fitting for one gentleman to pay another for services rendered, particularly if the money passed directly. Hence, the device

> of paying a barrister's fee to the attorney, not to the barrister himself. Hence, also the convention that in many professional dealings the matter of the fee was never openly talked about, which could be very convenient, since it precluded the client or patient from arguing about whatever sum his advisor might eventually indicate as a fitting honorarium (1966,p.37)

The established professions-the law, medicine, and the clergy-held (or continued to hold) estate-like positions :-

> The three 'liberal professions' of the eighteenth century were the nucleus about which the professional class of the nineteenth century was to form. We have seen that they were united by the bond of classical education: that their broad and ill-defined functions covered much that later would crystallize out into new, specialised, occupations: that each, ultimately, derived much of its standing with the established order in the State..(1966, page 23)".

In the United States, professional associations are guilds in modern dress.

> "Modern professional associations are organizational counterparts of the guilds. They are occupational self-interest organizations. In as much as the professions/ still perform custom work and exercise a monopoly of training and skill, the guild analogy is plausible. However, aspects of economic history lead to a different conclusion. There has been a shift of emphasis on the part of professionals from control over the guilty of the product or service, to control of rice."

Indeed, in America, processionals advertise, hold a strict monopoly, charge heavy fees and wear humanitarianism as an altruist mask. In England a Royal Commission has been appointed to go into certain aspects of the working of the legal profession.

The observer, in a leading article "VIEWS OF THE WEEK" dated 15 February,1976,wrote

"In preparing for the challenge of a Royal Commission, lawyers ought to realise how deep Public disillusionment goes, how the faults of the legal system are magnified by the feeling that the legal profession is the most powerful pressure group- some would say a mutual protection society- in the land, with its loyal adherents in Westminister, Whiteshall, and on the bench, like a great freemasonry designed to protect the status quo.

x x x x x

It robs the client of the benefits of free competition among barristers for his custom. It confirms his impression that Her Majesty's courts, which he rightly regards as part of the service the State offers to all its citizens, are a private benefit society for lawyers.

x x x x xxx

The fees that lawyers are paid, and the services that they give in return, must also be studied. A recent survey suggested that in one criminal court 79 percent of barristers in contested cases and 96 per cent in uncontested cases saw their clients only on the morning of the hearing. How much is that worth ?

x x x x x x x x x

..... For Britain at present has a legal system which often looks as anachronistic as its wigs and gowns, a system in which solicitors are plentiful in well-to-do areas, and inaccessible in less fashionable districts; in which the law appears suited only to the property rights of the middle class, but oblivious of the new problems of poorer and less well-educated people, who need help with their broken marriages or their landlord-and-tenant disputes. Sooner rather than later, the legal system must be made to appear less like a bastion of privilege, more like a defender of us all."

The American Medical Association has come in for sharp social criticism and litigative challenge. Which architect, engineer or auditor has the art to make huts, landscape little village or bother about small units? And which auditor and company secretary has not been pressured to break with morals by big business? Our listening posts are now life.

The Indian Bar and Medicine have a high social ethic upto now. Even so, Dabolkar (A.I.R.1957 S.C. 242) cannot be ignored as freak or recondite. Doctors have been criticised for unsocial conduct. The halo conjured up in the Solicitor's case hardly serves to 'de-industrialise' the professions. After all, it is not infra dig for lawyers, doctors, engineers, architects, auditors, company secretaries or other professionals to regard themselves as workers in their own sphere or employers or suppliers of specialised service to society. Even justicing is service and, but for the exclusion from industry on the score of sovereign functions, might qualify for being regarded as 'industry'. The plea of 'profession' is irrelevant for the industrial law except as expression of an anathema. No legal principle supports it.

Speaking generally, the editors of the book Profession for the people earliest mentioned state:

> "Jethro K.Lisberman (1970, p. 3) warns : "Professionals are dividing the world into spheres of influence and erecting large signs saying 'experts at work here, do not proceed further." He shows that via such mechanisms as licensing, self-regulation, and political pressure the professions are augmenting the erosion of democracy. Professional turf is now ratified by the rule of law. If there is the case, it represents a significant development: the division of labour in society is again moving towards the legalization of social status quo occupational roles."

All this adds up to the deconnonisation 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'.

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 thic 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 highborne, 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 materialise the ghost. The paradigms of professionalism are gone. In the large solicitors' firms, arohitects' offices, medical polyclincs 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 co-ordinated 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 distalled 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 organisation 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

contd.

that the modern 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 muffasil 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 operation of several specialists, juniors and seniors. Likewise the ancillary services of competent stenographers, para-legal 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 public duties under the Act will be opened if professions fall out of its scope.

Many callings may clamour to be regarded as liberal professions. In an age when traditions have broken down and the old world 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.

The result of this discussion is that the solicitors' case is wrongly decided and must, therefore, be over-ruled. We must hasten, however, to repeat that a small category, perhaps large in numbers in the muffasil, may not squarely fall

---

contd.

within the definition of industry. A single lawyer, a rural medical practitioner or urban doctor with a little assistant and/or 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 plurality of workmen, not an isolated or 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 blacksmith 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 engineers, 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 sec.2(j). Otherwise automated industries will slip through the net.

Education

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 institutes or teaching institution will be an industry. But in University of Delhi (1964 (2) S.C.R. 703) it was held that the Industrial Tribunal was wrong in regarding the University as an industry because it would be inappropriate to describe

contd.

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 respectibility? 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 :

contd.

"It is common ground that teachers employed by educational institutions, whether the said institutions are imparting primary, secondary, collegiate or postgraduate education, are not workmen under s.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 s.2(s), and any disputes between them and the instituions which employed them are outside the scope of the Act. In other words, if imparting education is an industry under s.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 s.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 s.(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 ss.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."

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

"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 s.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 s.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

contd.

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."

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 s.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 s.2(g), or that the work of teaching carried on by them is an industry under s.2(j), because essentially, the creation of a well-educated healthy young generation imbued with a rational progressive out-look 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."

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 menxal employees of the department came under the definition of employees and would

contd.

be entitled to the benefits of the Act. This was explained away by the suggestion that "the 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 s.2(14), was not argued before the Court and was not really raised in that form."

We dissent, with utmost deference, 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 (supra), that education is pre-eminently service.

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.

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.

contd.

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.

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 karmcharis of various hues. As the Corporation of Nagpur has effectively ruled, these operations, viewed in severalty 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 severable 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.

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

contd.

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 workship'. 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.

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 as viewed the ingredients of education are fulfilled. Education is, therefore, an industry and nothing can stand in the way of that conclusion.

It may well be said by realists in the cultural field that educational managements

contd.

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, atleast in the private sector, of being tranished with trade motives.

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.

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?

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 law look may score; a legal look will see; a social look will see through a hiatus inevitable in a sophisticated society with organizational diversity and motivational dexterity.

If we mull over the major decisions, we get a hang of the basic structure of 'industry' in its legal anatomy. Bedrocked on the groundnorms, we must analyse the

---

contd.

elements of charitable economic enterprises, established and maintained for statisfying 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 charitable enterprises run for producing and/or supplying goods and services, organized systematically and employing workmen, is scientific.

The first is one where the enterprise, like any other, yields profits but they are siphoned off for altrustic 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 to 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?

All industries are organised, 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 employees and employees to produce and/or supply goods and/or services. We assume, all three do. The crucial difference is over the presence of charitable 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.

contd.

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 involes 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 business. 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.

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 counter-parts 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 hard work, 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

contd.

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.

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 handicraftsmen, 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

contd.

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.

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

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-employees 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 Sec.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

contd.

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 is making available goods and services, if the substantive nature of the work, to distinguished from trivial items, is rendered by voluntary wageless 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 a Sabarmati, Aurobindo led his hallowed silence in Pondicherry, the inmates belonged to this chastened breed. 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 instituion 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.

It now remains to make a brief survey of the precedents on the point. One case which is germane to the issue is Bombay Panirapole, (1972 (1) S.C.R. 202). A bench of this Court considered the earlier case-law, including the decisions of the High Courts bearing on humane activities for the benefit of sick animals. Let there be no doubt that kindness to our dumb brethren, especially invalids, springs from the highest motives of fellow feeling. In the land of the Buddha and Gandhi no one dare argue to the contrary. So let there be no mistaking our compassionate attitude to suffering creatures. It is laudable and institutions dedicated to amelioration of conditions of animals deserve encouragement from the State and affluent philanthropists. But these considerations have no bearing on the crucial factors which invoke the applicatio of the definition in the Act as already set out elaborately by us. "The manner in which the activity in question is organised or arranged, the condition of the co-operation between the employer and the employee necessary for its success and its object to render material service to the community" is a pivotal factor in the activity-oriented test of an 'industry'. The compassionate motive and the charitable inspiration are noble but extraneous. Indeed, medical relief for human beings made available free by regular hospital, run by government or philanthropists, employing doctors and supportive staff and business-like terms, may not qualify for exemption from industry. Service to animals cannot be on a higher footing than service to humans. Nor is it possible to contend that love of animals is religious or spiritual any more than love of

contd.

human-beings is. Anpinjrapole is no church, mosque or temple. Therefore, without going into the dairying aspects, income and expenditure and other features of Bombay Panjropole, one may hold that the institution is an industry. After all, the employees are engaged on ordinary economic terms and with conditions of service as in other business institutions and the activities also have organisational comparability to other profit-making dairies or Panjrapoles. What is different is the charitable object. What is common is the nature of the employer-employee relations. The conclusion, notwithstanding the humanitarian overtones, is that such organisations are also industries. Of course, in Bombay Panjrapole the same conclusion was reached but on different and, to some extent faulty reasoning. For, the assumption in the judgment of Mitter J., is that if the income were mostly from donations and the treatment of animals were free, perhaps such charity, be it a hospital for humans or animals, may not be an industry. We agree with the holding, not because Panjrapoles have commercial motives but because, despite compassionate objectives, they share business-like orientation and operation. In this view, section 2(j) applies.

We may proceed to consider the applicability of Sec.2(j) to institutions whose objectives and activities cover the research field in a significant way. This has been the bone of contention in a few cases in the past and is one of the appeals argued at considerable length and with considerable force by Shri Tarkunde who has presented a panoramic view of the entire subject in his detailed submissions. An earlier decision of this court, The Ahmedabad Textile Industries Research Association case (1961 (2) S.C.R. 460) has taken the view that even research institutes are roped in by the definition but later judicial thinking at the High Court and Supreme Court levels has leaned more in favour of exemption where profit-motive has been absent. The Kurji Holy Family Hospital was held not to be an industry because it was a non-profit-making body and its work was in the nature of training, research

contd.

and treatment (1971 (1) S.C.R. 177). Likewise in Dhanrajgirji Hospital v. Workmen (A.I.R. 1975 S.C. 2232), a bench of this Court held that the charitable trust which ran a hospital and served research purposes and training of nurses, was not an industry. The High Courts of Madras and Kerala have also held that research institutes such as the Pasteur Institute, the C.S.I.R. and the Central Plantation Crops Research Institute are not industries. The basic decision which has gone against the Ahmedabad Textile case is the Safdarjung case. We may briefly examine the rival view-points, although in substance we have already stated the correct principle. The view that commends itself to us is plainly in reversal of the ratio of Safdarjung which has been wrongly decided, if we may say so with great respect.

Research.

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 him 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 wait to get his reward in heaven; he received it munificiently 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 institutes itself, it can be regarded as an organisation, propelled by systematic activity, modelled on co-operation

contd.

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 institutions, albeit run without profit-motive are industries.

True Shri Tarkunde is right if Safdarjung is rightly decided. The concluding portions of that decision proceed on the footing that research and training have an exclusionary effect. That reasoning, as we have already expounded, hardly has our approval.

Clubs:- Are clubs industries? The wide words used in sec.2(f) 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 inflate expressions into bursting point or proliferate odd judicial arrows which at random sent, hits 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 organised employer-employee relations. So, where the dichotomy of employer and workman 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, forthat matter a dispute

contd.

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, pinjarapole, 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 auxilliaries and the cooks, waiters, bell boys, pickers, bar maids 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 results of the organisation.

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

contd.

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.

We have adverted to a possible category of clubs and associations which may swim out of the industrial pool - we mean self-serving clubs, societies or groups or associations, Less fashionable but more numerous in a poor, populous, culturally hungry country with democratic urges and youthful vigour is this species. Lest there should be a rush by the clubs we have considered and dismissed to get into this proletarian brood if we may so describe them to identify, not at all to be pejorative, - we must elucidate.

It is a common phenomenon in parts of our country that workers, harijans, student youth at the lower rungs of the socio-economic ladder, weaker sections like women and low-income groups quench, their cultural thirst by forming gregarious organisations mainly for recreation. A few books and magazines, a manuscript house magazine contributed by

contd.

and circulated among members, a football or volley ball game in the evenings - not golf, billiards or other expensive games - a music or drama group, an annual day, a competition and pretty little prizes and family get-together and even organizing occasional meetings inviting V.I.Ps. - these tiny yet luscent culcural bulls dot our proletarian cheerlessness. And these hopeful organisms, if fostered, give a mass spread for our national awakening for those for whom no development bells yet toll.

Even these people's organis 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 C.C.I. which reacted this court for adjudicati... 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 items 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 element is self-service. In such an institution, a part-time sweeper or scavenger 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 centrality 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

contd.

taken care of by paid staff, and the members' role is to enjoy. The small man's Nehru Club, Gandhi Granthasala, Anna Mahram, Netaji Youth Centre, Brother Music Club, Muslim Sports Club and like organs often named after natural 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 percent 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.

The leading cases on the point are Gymkhana and C.C.I. We must deal with them before we conclude on this topic.

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'. 'Broadly, an industry is thus said to involve cooperation 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

contd.

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".

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 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'.

contd.

'This element ? What element makes it-analagous 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'.

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 share-holders 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.

The Cricket Club of India (1969 (1) SCR.600) stands in a worse position. It is a huge under-taking with activities wide-ranging, with big budgets, army of staff and profit-making adventures

contd.

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 Sec.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 defination 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- areindustries.

contd.

Do credit unions, organised on a cooperative basis, scale the definitional walls of industry? They do. The judgment of the Australian High Court in The Queen V. Marshall Ex Parte Federated Clerks Union of Australia (1975 (132) C.L.R. 595)helps reach this conclusion. 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.

It is enough, therefore, if the activities carried on by credit unions can accurately be described as incidental to industry or to the organised 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.

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.

A sharp bend in the course of the Law came when Safdarjung was decided. The present reference has come from that land mark case, and necesserily, 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 out deviation from the decision in Safdarjung.

Hidayatullah, C.J., considered the facts of the appeals clubbed together there and held that all the three institutions in the bunch of appeals

contd.

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 morethan a place 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 asrearch 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."

Even a cursory glance makes it plain that the learned Judge took the vi-w 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

contd.

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.

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 service".

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

contd.

> 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."

With the greatest respect to the learned Chief Justice, the arguments strung together in this paragraph are too numerous and subtle for us to imbibs. 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. Not are we convinced that Gymkhana and Cricket Club of India are correctly decided. The learned judge placed account on the non-profit making members club as being outside the pale of trade or industry. We demur to this proposition.

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 morethan 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

contd.

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 fact 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-employees 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 sec.2(j). We must plainly state that vis-a-vis hospitals, Safdarjung was wrong and Hospital Mazdoor Sabha was right.

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 (1976 (2) S.C.R. 138) 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 I.S.I. :

contd.

> "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 atall 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 upto 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 loss 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."

Our endeavour in this decision is to provide such working principles. This Court, within a few years of the enactment of the salutory 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 humanscape hopefully projected by Part IV of the Constitution.

contd.

But the drama of a nation's life, especially when it confronts dis-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. Aprocession of decisions - Solicitors' case. University of Delhi, Gymkhana Club, Cricket Club of India, Chartered Accountants (1963 I LLJ 567 (Calcutta) 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 (I.S.I. 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.

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 zigzaged and conflicted precisely because of this built-in ambivalance. It behoves us, therefore, hopefully to abolish blurred edges, illumine penumbral areas and over-rule what we regard as wrong. Hesitency, 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

contd.

for their smooth fulfilment, less stress and distress, more mutual understanding and trust based on a dynamic rule of law which speaks clearly, finally 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.

'Industry' as defined in Sec.(j) and explained in Banerji, has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee the divert and substantist element is chimeneal (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 of, making, on a larke scale or 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 Sec. 2(j) uses words of the widest amplitude in its two rimbs, their meaning cannot be magnified to over reach 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 of business, may still be 'industry' provided the nature of the activity, viz the employer

.....36/-

- 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 of trade or business.' All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee may be dissimilar. It does not matter, if on the employment terms there is analogy.

III Application of these guidelines should not shop short of their logical reach by invocation of creeds, cults of 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 workman, the range of 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 (iii) co-operatives, (iv) research institutes (v) charitable projects and (vi) other kindered adventures, if they fulfil the triple tests listed in I(supra), cannot be exempted from the scope of sec.2(j).

(b) A restricted category of professions, clubs, co-operations and even gurukules 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 likely 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, divinitis 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 isnot an industry even if stray servants, manual or technical, are hired. Such elemosynary or like undertakings alone are

.....37/-

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 sec.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 over-rule Safdarjung, Solicitors' case, Gymkhana, Delhi University, Dhanraj Giri Hospital and other rulings whose ratio runs counter to the principles enunciated above and Hospital Mazdoor Sabha is lovely relocated.

We conclude with difference because Parliament which has the commitment to the political nation to legislate properly 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 tell 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 Socialism.

.....38/-

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-India 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 Severage Board appeal we are not disposing of the others on the merits. We dismiss that appeal with costs and direct all the others be posted before a smaller bench for disposal on the merits in accordance with the principles of Law herein laid down.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEALS NOS. 753-754 (T) of 1975, etc.

The Bangalore Water
Supply & Sewerage Board,
etc. etc. .. Appellants

Versus

A. Rajappa & Ors. etc. etc. .. Respondents

ORDER

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.

(Y.V. CHANDRACHUD) J.

(JASWANT SINGH) J.

(V.D. TULZAPURKAR) J.

New Delhi,
February 21, 1978.

..

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEALS NOS. 753-54(T) OF 1975 ETC. ETC.

The Bangalore Water Supply & Sewerage Board etc.etc. — Appellants

Vs.

A.Rajappa & Ors. etc. etc. — Respondents

JUDGMENT

BEG.C.J.

I am in general agreement with the line of thinking adopted the conclusions reached by my learned brother Krishna Iyar. I would, however, like to add my reasons for this agreement and to indicate my approach to a problem where relevant legislation leaves so much for determination by the Court as to enable us to perform a function very akin to legislation.

My learned brother has relied on what was considered in England a somewhat unorthodox method of Construction in Seaford Court Estates Ltd. V. Asher, (1) where Lord Denning , L.J., said :

> "When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of findings the intention of Parliament. and then he must supplement the written words so as to give 'force and life' to the intention of legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out. He must than do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

When this case went up to the House of Lords it appears that the Law Lords disapproved of the bold effort of Lord Denning to make ambiguous legislation more comprehensible. Lord Simonds found it to be "a naked usurpation of the legislative function under the think disguise of interpretation." Lord Morton (with whom Lord Gooddard entirely agreed) observed : "These heroics are out of place" and lord Tucker said "Your Lordships would be acting in a legislative rather than a judicial capacity if the view put forward by Denning, L.J. , were to prevail."

Perhaps, with the passage of time,what may be described as the extension of a method resembling the

.....

(1) (1949)2 All. E.R. 155 @ 164 .

"arm chair rule" in the construction of wills, Judges can more frankly step into the shoes of the lagislature where an enactment leaves its own intentions in much too nebulous or uncertain a state. In M.Pentiah V. Veerramullappa.,(2) Sarkar, J., approved of the reasoning, set out above, adopted by Lord Danning. And, I must say that , in a case where the definition of "Industry" is left in the State in which we find it, the situation perhaps calls for some judicial heroics to cope with the difficulties raised.

In his heroic effors, my learned brother Krishna Iyer, if I may say so with great respect, has not discarded the tests of industry formulated in the past. Indeed, he has actually restored the tests laid down by this Court in D.N.Banerji's Case,(3) and , after that, in the Corporation of the City of Nagpur V. Its Employees. and State of Bombay & Ors. V. The Hospital Mazdoor Sabha & Ors.(5)., to their prestine glory. My learned brother has, however, rejected what may appear, to use the word employed recently by an American Jurist, "excrescenses" of subjective notions of judges which may have blurred those tests. The temptation is great, in such cases, for us to give expression of what may be purely subjective personal predilections. It has, however, to be resisted if law is to possess a direction in conformity with Constitutional objectives and criteria which must impart that reasonable state of predicatablility and certainty to interpretations of the Constitution as well as to the laws made under it which citizens should expect. We have, so to speak, to chart what may appear to be a Sea in which the ship of law like Noah's ark may have to be navigated. Indeed, Lord Sankey on one occasion, said that law itself is like the ark to which people look for some certainty and security axidst the shifting sands of political life and vicissitudes of times. The Constitution and the directive principles of State policy, read with the basic fundamental rights, provide us with a compass. This Court as tried to indicate in recent cases that the meaning of what could be described as a basic "structure" of the Constitution must necessarily be found in express provisions of the construction and not merely in subjective notions about meanings of words. Similar must be the reasoning we must employ in extracting the core of meaning hidden between the interstices of statutory provisions.

Each of us is likely to have a subjective notion about "industry". For objectivity, we have to look first to the words used in the statutory provisions defining industry in an attempt to find the meaning. If that meaning is clear, we need proceed no further. But, the trouble here is that the words found there do not yield a meaning so readily. They refer to what employers or workers may do as parts of their ordinary avocation or business in life. When we turn to the meaning given of the term "worker "in Sect.2(s) of the Act. we are once more driven back to find it is in the bosom

---

(2) AIR 1961 SC 1107 @ 1115 .
(3) (1953) SCR 302

of "industry", for the term " worker" is defined as one

> "employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings 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 consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute."

The definition, however, ecludes specifically those who are subject to the Army Act 1950 or the AIR FORCE Act 1950, or the Navy Discipline Act 1934, as well as those who are employed in the police service or officer and other employees of a Prison, or employed in mainly managerial or administrative capacities or who, being employed in supervisory capacity , draw wages exceeding Rs. 500/- per mensem.

Thus, in order to draw the "circle of industry" to use the expression of my learned brother Iyer, we do not find even the term "workman" illuminating. The definition only enables us to see that certain classes of persons employed in the service of the state are excluded from the purview of industrial dispute which the Act seeks to provide for in the interests of industrial peace and harmony between the employers and employees so that the welfare of the nation is secured. The result is that we have then to turn to the preamble to find the object of the Act itself, to the legislative history of the Act, and to the socio-economic ethos and aspirations and needs of the times in which the Act was passed.

The method which has been followed, whether it be called interpretation or construction of a part of an organic whole in which the Statute , its objectives, its past and its direction for the future, its constitutional setting are all parts of this whole with their co-related functions. Perhaps it is impossible, in adopting such a method of interpretation , which some may still consider unorthodox, a certain degree of subjectiveity. But , our attempt should be not to break with the well established principles of interpretation in doing so. Progressive rational and beneficial modes of interpratation import and fit into the body of the old what may be new. It is a process of adaptation for giving new vitality in keeping with the progress of though in our times. All this, however, it is not really novel, although we may try to say it in a new way.

If one keeps in mind what was laid down in Heydon's Case(supra) referred to by my learned brother Iyer, the well known principle that a statute must be interpreted as a whole, in the context of all the provisions of the statute , its objects, the preamble, and the functions of various provisions, the true meaning may emerge. It may

not be strictly a dictionary meaning in such cases.

Indeed, even in a modern statute the meaning of a term such as "industry" may change with a rapidly changed social and economic structure. For this proposition I can do no better than to quote Subba Rao J speaking for this Court in *(1) THE SENIOR ELECTRIC INSPECTOR V. LAXMI NARAYAN CHOPRA :

"The legal position may be summarized thus : The maxim contemporanea expositio as laid down by Coke was applied to construing ancient statutes but not to interpreting Acts which are comparatively modern. There is a good reason for this change in the mode of interpretation. The fundamental rule of construction is the same whether the Court is asked to construe a provision of an ancient statute or that of a modern one, namely, what is the expressed intention of the Legislature. It is perhaps difficult to attribute to a legislative body functioning in a static society that its intention was couched in terms of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in a modern progressive society it would be unreasonable to confine the intention of a legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them."

In the workmen OF DIMAKUCHI TEA ESTATE V. THE MANAGEMENT OF DIMAKUCHI TEA ESTATE it was observed : (1)**

" A little careful consideration will show, however, that the expression "any person" occuring in the third part of the definition clause cannot mean anybody and every body in this wide world. First of all, the subject matter of dispute must relate to(1) employment or non-employment of(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 workman. Secondly, the definition clause must be

* (1) 1962(3) SCR 146
** (1) 1958 SCR 1156 @ 1163

> read in the context of the subject matter and scheme of the Act, and consistently with the objects and other provisions of the Act. It is well settled that "the words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the anactment and the object whifh the Legislature has in view. Their meaning is found not so much is strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained. " (Maxwell, Interpretation of Statutes, 9th Edition, P.55).

It was also said there :

> " It is necessary, therefore, to take the Act as a whole and examine its salient provisions. The long title shows that the object of the Act is "to make provision for the investigation and settlement of industrial disputes, and for certain other purposes." The presmble states the same object and s.2 of the Act which contains definitions States that unless there is nything repugnant in the subject or context, certain expressions will have certain meaning."

Thus, it is in the context of the purpose of the Act that the meaning of the term 'industry' was sought.

Again dealing with the objects of the Act before us in BUDGE BUDGE MUNICIPALITY CASE (1) THIS Court said

> "when our Act came to be passed, labour disputes had already assumed big proporations and there were clashes between workmen and employers in several instances. We can assume that it was to meat such a situation that the act was enacted, and it is consequently necessary to give the terms employed in the Act referring to such disputes as wide an import as reasonably possible."

In that very case this Court also said (at p.308)

> "There is nothing, however, to prevent a statute from giving the word "industry" and the words "industrial dispute" a winder and more comprehensive import in order to most 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 veriety of fields of activeity. It is obvious that the limited concept of what an industry meant in early times must now yield place to an enormously winder concept so as to take in various and varied forms of industry,

(1) 1953 SCR 302 @ 310

so that disputes arising in connection with them might be settled quickly without much dislocation and disorganisation of the needs of the society and in a manner more adopted to conciliation and settlement than a determinisation of the respective rights and liabilities according to strict legal procedure and principles." (1)

Again, in HOSPITAL MAZDOOR SABHA CASE this Court said :

" 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 Sec.2(2). The object of the Act was to make provision for the investigation and settlement of industrial disputes, and the extent and scope of the provisions would be realised if we bear in mind the difinition of "industrial disputes" given by section 2(k) ., of "wages" by section 2(rr). by section2(g) ."

It added :

"It is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense."

I may here set out the definition given by the Act of the term 'industry' in section 2, sub.s.(j) :

"(j) "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;

It seems to me that the defination was not meant to provide more than a guide. It raises doubts as to what could be meant by the "calling of employers" even if business, trade, undertaking or manufacture could be found capable of being more clearly delineated. It is clear that there is no mention here of any profit motive.

obviously, the word "manufacture " of employers could not be interpreated literally. It merely means a process of manufacture in which the employers may be engaged. It is , however, evident that the term 'employer' necessarily postulates employees without whom there can be no employers. But, the second part of the definition makes the concept more nebulous as it, obviously, extends the definition to "any calling, service, employment, handicraft or industrial occupation or avocation of workman." I have already examined the meaning of the terms "workmen" .I have refers us back to what is an "industry". It seems to me that the second part, relating to workmen, must necessarily indicate something which may exclude employers and include an "industry" consisting of individual handicraftsmen or

---

(1)1960(2)SCR 866 @ 775 .

workman only. At any rate, the meaning of industrial disputes includes disputes between workman and workman also. Therefore, I cannot see how we can cut down the wide ambit of last part of the definition by searching for the pre-dominant meaning in the first part unless we were determined, at the outset, to curtail the scope of the second part somehow. If we do that, we will be deliberately cutting down the real sweep of the last part. Neither "Noscitur a sociis" rule nor the "ejusdem generis" rule are adequate for such a case.

There is wisdom in the suggestion that in view of these difficulties in finding the meaning of the term 'industry', as defined in the Act, it is best to say that an industry cannot strictly be defined but can only be described. But , laying down such a rule may again leave too wide a door open for speculation and subjective notions as to what is describable as an industry. It is, perhaps, better to look for a rough rule of guidance in such a case by considering what the concept of 'industry" must exclude.

I think the phrase ' analogous to industry' , which has been used in the Safdarjung Hospital case(supra) could not really cutdown the scope of "industry". The result, however, of that decisionhas been that the scope has been cut down . I, therefore, completely agree with my learned brother that the decisions of this Court in Safdarjung Hospital case and other cases mantioned by my learned brother must be held to be overruled. It seems to me that the term 'analogous to trade or business' could reasonably mean only activity which results in goods made or manufactured or services rendered which are capable of being converted into salable ones. Theymust be capable of entering the world of "res comperciun" although they may be kept out of the market for some reason. It is not the motive of an activity in making goods or rendering a service, but the possibility of making them marketable if one who makes good or renders services so desires, that should determine whether the activity lies within the domain or circle of industry. But, even this may not be always a satisfactory test.

The test indicated above would necessarily exclud the type of services which the rendered purely for the satisfaction of spiritual or psychological urges of persons rendering those services. These cannot be bought or sold. For persons rendering such services they may be no'industry,' but , for persons who want to benefit from the services rendered, it would become on "industry." When services are rendered by groups of charitable individuals to themselves or other out of missionary zeal and purely charitable motives, there would hardly be any need to invoke the provisions of the Industrial Disputes Act to protect them. Such is not the type of persons who will raise such a dispute as workmen or employees whatever they may be doing.

This is leads one on to consider another kind of test. It is that, wherever an industrial dispute could arise between either employers and their workmen or between workmen and workman, it should be considered an area within the sphere of 'industry' but not otherwise. In other wards, the nature of the activity will be determined by the conditions which give rise to the likelihood of occurrence of such disputes and their actual occurrence in the sphere. This may be a pragmatic test. For example, a lawyer or a solicitor could not raise a dispute with his litigants in general on the footing that they were his employers. Nor could doctors raise disputes with their patients on such a footing. Again, the personal character of the relationship between a doctor and his assistant and a lawyer and his clerk may be of such a kind that it requires complete confidence and harmony in the productive activity in which they may be cooperating so that, unless the operations of the solicitor or the lawyer or the doctor take an organised and systematised form of a business or trade, employing a number of persons, in which disputes could arise between employers and their employees, they would not enter the field of industry. The same type of activity may have both industrial and non-industrial aspects or sectors.

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 Keshvananda Bharati's case 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, in as much 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 in as much 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 Article 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication.

I am impressed by the argument that certain public utility services which are carried out by governmental agencies or corporations are treated by the Act itself as within the sphere of industry. If express rules under other enactments govern the relationship between the State as an employer and its servants as employees it may be contended, on the strength of such provisions, that a

particular set of employees are outside the scope of the industrial disputes Act for that reason. The special excludes the applicability of the general. We cannot forget that we have to determine the meaning of the term 'industry' in the context of and for the purposes of matters provided for in the Industrial Disputes Act only.

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 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.

(1) I will, however, quote a passage from State of Rajasthan V. Mst. Vidyawati & Anr. where this Court said :

> "In this connection it has to be remembered that under the Constitution we have established a welfare state, whose functions are not confined only to maintaining law and order but extend to engaging in all activities including industry, public transport, state trading, to name only a few of them. In so far as the State activities have such wide ramifications involving not only the use of sovereign powers but also its powers as employers in so many public sectors, it is too much to claim that the State should be immune from the consequences of tortious acts of its employees committed in the course of their employment as such."

I may also quote another passage from Rajasthan State Electricity Board Vs. Mohan Lal(1)* to show that the State today increasingly undertakes commercial functions and economic activities and services as part of its duties in a welfare state. The Court said there :

> Under the Constitution, the State is itself envisaged as having the right to carry on trade or business as mentioned in Act 19(1)(g) . In Part IV, the State has been given the same meaning as in Art.12 and one of the Directive principles laid down in Act. 46. is that the state shall promote with special care the educational and economic interests of the weaker sections of the people. The State, as defined in Art.12, is thus comprehanded to include bodies created for the purpose of promoting the educational and economic interests of the people. The State, as constituted by our Constitution, is further specifically empowered under Art.298to carry on any trade or business. The circumstances that the Board under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, therefore, give any indication that the Board must be excluded from the scope of the word "state " as used in Art.12."

---

(1) 1968 Supp. (2) SCR 989 @ 1002

Hence, to artificially exclude State run industries from the sphere of the Act, unless statutory provisions, expressly or by a necessary implication have that effect, would not be correct. The question is one which can only be solved by more satisfactory legislation on it. Otherwise, Judges could only speculate and formulat tests of "Industry" which cannot satisfy all. Perhaps to see to satisfy all is to cry for the room.

For the reasons given above, I indorse the opinion and the conclusions of my learned brother Krishna Iyer.

CJI

New Delhi
February21, 1978. (M.H. BEG)