(Punjab), resulted in the retrenchment of some employees. The Company had its registered office in Calcutta (West Bengal). The Government of Punjab referred a dispute about the validity of the retrenchment. In an appeal to the Supreme Court from the Tribunal's award the Company contended, *inter alia,* that in view of the closure of the business at Ambala in the Punjab the Punjab Government had no longer been competent to make the reference. The Supreme Court observed that the Industrial Disputes Act is silent on which of the governments has jurisdiction to refer a dispute arising in an industry with branches in two or more States. This question, the Court held, must be decided "on the principles governing the jurisdiction of Courts to entertain actions or proceedings". According to these principles a Court would assume jurisdiction on the basis of the residence of the parties or on the basis of the place where the dispute arose. The reference was upheld as valid.

2. In *Ram Kishan* v. *Shambu Nath Vaid,* A.I.R. 1962, Punjab, the Government of Punjab referred a dispute about the legality of the dismissal of a worker for disobeying an order transferring him from Amritsar (Punjab) to Mussoorie (U.P.). The employer contended, in a petition to Punjab High Court, that the Punjab Government had not been the "appropriate government" in relation to this dispute. The Court observed that "appropriate government" really means the Government of the State "where the dispute arises", and held that as the employee was serving at Amritsar and had never gone to Mussoorie, the Punjab Government had continued to be competent to refer the case.

B. INDUSTRIES AND WORKMEN

STATE OF BOMBAY v HOSPITAL MAZDOOR SABHA
A.I.R. 1960 S.C. 610; (1960) I L.L.J. 251

[The Hospital retrenched two ward servants with due notice but without compliance with the *Industrial Disputes Act,* 1947, Sections 25(F) and (H). They, with the Hospital Union, sought from the Bombay High Court a writ of mandamus directing their reinstatement. In opposition the Hospital urged that mandamus did not lie because the retrenchment orders were not void; but that even if they were void the Hospital (and the group of five Hospitals to which it belonged) did not constitute an industry, and so the Act did not apply.

The Bombay High Court, by Tendolkar, J. denied the writ petition on the ground that the retrenchment orders were not void, so that if they were invalid yet the remedy was mistaken.

mandamus on the ground that failure to pay the severance pay required by Section 25(F), fifteen days' pay for each year of service, made the orders inoperative.

The Bombay High Court issued to the Hospital a certificate of fitness for appeal, under Article 133(1)(c), by which this appeal reaches the Supreme Court, on facts that are not in dispute.

A part of the judgment of the Court delivered by Gajendragadkar, J., follows:]

[T]he next question which calls for an answer... is: [Is the Act itself applicable to the group of Hospitals with which we are concerned?] The decision of this question depends upon the interpretation of the definition of "Industry" prescribed by S. 2(j) of the Act....

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

It will be noticed that the words used in the definition are very wide in their import, and even so its latter part purports to provide an inclusive definition. The word "undertaking" according to Webster means "anything undertaken; any business, work or project which one engages in or attempts, an enterprise". Similarly, "trade" according to Halsbury, in its primary meaning, is "exchange of goods for goods or goods for money", and in its secondary meaning it is "any business carried on with a view to profit whether manual or mercantile as distinguished from the liberal arts or learned professions and from agriculture;" whereas "business" is a wider term not synonymous with trade and means "practically anything which is an occupation as distinguished from pleasure". The word "calling" again is very wide; it means "one's usual occupation, vocation, business or trade"; so the word "service" is very wide in its import. Prima facie, if the definition has deliberately used words of such wide import it would be necessary to read those words in their wide denotation; and so read, Hospitals cannot be excluded from the definition.

It is, however, contended that in construing the definition, we must adopt the rule of construction *noscuntur a sociis*. This rule according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general....

The argument is that certain essential features or attributes are invariably associated with the words "business" and "trade" as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that *noscuntur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider.... If the object and scope of the statute are considered there would be no difficulty in holding that the relevant words of wider import have been deliberately used by the Legislature in defining "industry" in S. 2(j). The object of the Act was to make provision for the investigation and settlement of industrial disputes and the extent and scope of its provisions would be realised if we bear in mind the definition of "industrial disputes" "wages" "workmen" and "employer" given by S. 2. Besides, the definition of public service[1] prescribed by S. 2(n) is very significant. One has merely to glance at the six categories of public utility service mentioned by S. 2(n) to realise that the rule of construction on which the appellant relies is inapplicable in interpreting the definition prescribed by S. 2(j).

There is another point which cannot be ignored. Section 2(j) does not define "industry" in the usual manner by prescribing what it means; the first clause of the definition gives the statutory meaning of "industry" and the second clause deliberately refers to several other items of industry and brings them into the definition in an inclusive way. It is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense....

Besides... too much reliance cannot be placed on what are described as the essential attributes or features of trade or business as conventionally understood. The conventional meaning attributed to the words "trade and business" has lost some of its validity for the purpose of industrial adjudication. Industrial adjudication has to be aware of the current of socio-economic thought. It must recognise that its essential function is to assist the State by helping a solution of industrial disputes which

1. It now includes any railway service or air transport; any section of an industrial establishment on which the safety of the establishment or workers depends; any postal, telegraph, or telephone service; industry supplying power, light, or water to the public; any public conservancy; or any industry in the First Schedule of the Act, declared a public utility in an emergency by an appropriate Government. *Eds.*

constitute a distinct and persistent phenomenon of modern industrialised States. In attempting to solve industrial disputes industrial adjudication does not and should not adopt a doctrinaire approach. It must evolve some working principles and should generally avoid formulating or adopting abstract generalisation. Nevertheless it cannot harp back to age old notions about the relations between employer and employee or to the doctrine of laissez faire which then governed the regulation of the said relations....

It is clear, however, that though S. 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 a 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).

It is true that under the old-world notion prevailing under the capitalist form of society, industry generally means an economic activity involving investment of capital systematically carried on for profit, for the production or sale of goods by the employment of labour. When it is said by the appellant that an undertaking should be analogous to a trade or business what is really intended is that unless the undertaking in question shares the aforesaid essential features associated with the conventional notion of trade or business it should not be treated as falling under S. 2(j). There are two serious difficulties in accepting such a suggestion. It is not disputed that under S. 2(j) an activity can and must be regarded as an industry even though in carrying it out the profit motive may be absent. It is also common ground that the absence of investment of any capital would not make a material difference to the applicability of S. 2(j). Thus two of the important attributes conventionally associated with trade or business are not necessarily predicated in interpreting S. 2(j). What attributes or features should then be common between trade and business on the one hand and an undertaking and other items mentioned in S. 2(j) on the other?

It would be possible to exclude some activities from S. 2(j) without any difficulty. Negatively stated the activities of the Government which

are regal or sovereign activities are outside the scope of S. 2(j). These are functions which a constitutional Government must undertake for governance and which no private citizen can undertake.... [But sovereign activities cannot include welfare activities]. It sounds incongruous and self contradictory to suggest that activities undertaken by the Government in the interests of socio-economic progress of the country as beneficial measures should be exempted from the operation of the Act which in substance is a very important beneficial measure itself.

It is to be noted that the definition of the word "employer" given by S. 2(g) is of significance; an "employer" means—

(i) in relation to an industry carried on by or under the authority of any department, of the Central Government or a State Government, the authority prescribed in this behalf....

The definition clearly indicates that the Legislature intended the application of the Act to activities of the Government which fall within S. 2(j).... There is no doubt that if a Hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their conventional sense... if a private citizen runs a Hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under S. 2(j).... Does it make any difference that the Hospital is run by the Government in the interpretation of the word "undertaking" in S. 2(j)? In our opinion the answer to this question must be in negative....

[N]ow which are the attributes the presence of which makes an activity an undertaking within S. 2(j), on the ground that it is analogous to trade or business. It is difficult to state these possible attributes definitely or exhaustively; 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 services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised, or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus in the manner in which the activity in question is organised or arranged, the condition of 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 S. 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....

[It is not even necessary, as urged, that the person who carries on the activity should receive some *quid pro quo*. Purely philanthropic motives for an activity would not prevent the activity from being an undertaking. The Court then discussed some earlier cases in India and in Australia.]

In Brij Mohan Bagaria v. N. C. Chatterjee (A.I.R. 1958 Cal. 460) while dealing with the dispute between an Attorney of the Court and his dismissed employees, Sinha J., said that "however extended the meaning to be given to the word industry or to industrial dispute or to undertaking or calling we cannot include within their concept the case of an individual who carries on a profession dependent upon his own intellectual skill", and added that "every case must be decided upon its facts". It appears that, according to the learned judge, if an attorney or a doctor or a lawyer who follows a liberal profession, the pursuit of which depends upon his own education, intellectual attainments and special equipment, engages employees, that would not mean that the employer is engaging in an industry under S. 2(j).

We hold that the High Court was right in holding that the dispute... was an industrial dispute to which S. 25-F of the Act applies. The order passed by the High Court on the writ petition filed by the respondents is confirmed and the appeal is dismissed.

MADRAS PINJARAPOLE v LABOUR COMMISSIONER, MADRAS
Madras High Court, (1960) II L.L.J. 686

[This was an appeal to the Division Bench of the Madras High Court from a single judge's decision. The points at issue were (i) whether the Pinjarapole, an institution providing sustenance and shelter to certain helpless animals, was an industry; and (ii) whether the dispute between the management and the workmen was an industrial dispute. Below it had been held that the Pinjarapole was not an industry. Excerpts from the judgment, delivered by Anantanarayan, J., follow:]

The Idea of the Pinjarapole was that a place should be established in Madras "where all non-carniverous animals may be taken in and kept to live out the remainder of their lives in peace and without labour, until [in] the natural order of things they die a natural death." In other words,

the object was not merely humanitarian, it was really the fulfilment of a religious sentiment felt by many Hindus, particularly of an orthodox persuasion. The central idea was to save from the butcher's knife, or from sales to butchers, those old and infirm cattle, those dry and barren cows, the maintenance of which by the owners had become uneconomic and a burden.

But there can be no doubt whatever that, as the activities of this institution expanded, subsidiary activities which had definite economic objectives were also included within the scope of the institution. Thus the dicta of the learned Judge (Rama Chandra Iyer J.) are sustained by the record, that broadly seaking, "there is no element of trade or business involved in the various activities of the society. It cannot even be said that the activities in question are in any way analogous to a trade or business". These observations, however, do not extend to subsequent developments, the result of the growth of the institution, and its attempts to achieve self sufficiency. They were (i) purchase and sale of milk, upon a fairly wide scale (ii) the maintenance of a dairy farm during the period of the history of the institution and (iii) similarly, the maintenance of stud bulls, to enable dry cows to conceive and bear calves. As the learned judge states:

> "The activities would certainly partake [of] the character of a business, though the profits of such business might have gone to the humanitarian activities undertaken by the society."

What mainly induced the learned Judge to hold that these features did not detract from the essential character of this institution as not being an "industry" at all within the scope of the definition in S. 2(j) of the Act, was his conviction, upon the additional material, that these activities had been definitely abandoned since 1st April; 1958, and, in any event, prior to the reference by the Government [on December 22, 1958]... [we feel compelled to allow the appeal, to the extent of modifying the writ of certiorari now issued by the court, so as to remit the proceedings to the Labour Court for the recording of the essential evidence and for a clear adjudication on the issue in the light of that evidence, the available evidence being both inadequate and contradictory....

It is not seriously disputed by the learned counsel upon both sides that, though the institution itself may not be an "industry" as defined, a separate activity of that institution which comprises an individual unit of activity, such as, for instance, a dairy farm, could fall within the definition.

Any dispute between the employer and the workmen in such a unit, would be an 'industrial dispute' attracting the provisions of the Act....

In the affidavit, the Honorary Secretary states that (i) the dairy farm was started...about 1936, as an experimental measure, but was abandoned long ago, (ii) that there were purchases and sales of milk till 1st April, 1958, but the practice had been discontinued from that date, and (iii) that there were stud bulls, and that they were previously used for servicing dry cows, mostly sent by the donors at their request and this has been discontinued from 1st April, 1958. But in counter affidavit, these statements are refuted. As stated in one context, the workers claim that "the original object with which the institution was founded has practically become obsolete and it has been changed over to a commercial institution, earning large income by way of purchase and sale of milk, dairy farm, cow dung, feeding and other charges... the institution has its own stud bulls which are also yielding income, as the institution used to invite admissions of cows belonging to private parties towards covering charges." We find that these records, including the reply-affidavit of the institution, are no more than mere refutations. In our view, it is clear that the issues cannot be decided merely upon that plan; evidence will be required, which might be both oral and documentary in character....

[The court noted that to grant a writ of prohibition would not have been correct because that contemplates an assertion of jurisdiction by the inferior court based on a mistake of law. Here the claim was of a mistake not of law but of fact. The industrial tribunal (Labour Court) had, and has, "every jurisdiction" to enquire into the facts to decide its own jurisdiction. The Court referred to certain decisions and observed that regal and sovereign functions and individual intellectual services dependent upon personal qualifications do not come within the scope of the definition of industry].

But the present case is a difficult one in that it does not fall within either category of exclusion.... The Madras Pinjarapole not merely employs labour, but without that labour, its essential activities could not be carried on. The services that it renders are rendered through the instrumentality of the workers employed, and those are not mere incidental aspects, such as might be the case with regard to the clerks of a Solicitor's Firm, or the attendants and the clerical staff of a University, but they form the every cere of the beneficient work of the institution....

The learned Judge (Rama Chandra Iyer, J.) found a distinction in the present case, in the sense that the services rendered by the institution

were related to the satisfaction of animals' needs, and not human needs. He said, "where there is no element of trade, but a mere service is done purely out of the instinct of pity or of religion, it cannot be an undertaking except when such service is to satisfy human needs. In the present case, the activities of the Pinjarapole have nothing to do with human needs. They are solely devoted to the needs of helpless animals. Though incidentally such activities may have a business tinge about them, it cannot be said that they have, for their object, any human needs or material welfare.... It would follow that the tests laid down by the Supreme Court in the Hospital Mazdoor case could not be held to be satisfied, in that the activities of Pinjarapole have not been directed to the satisfaction of human needs". We are afraid that this reasoning, however much it might be reinforced by the obvious fact that a line must be drawn somewhere in applying the tests of the definition to human activities, cannot be sustained in the last analysis. It could well be contended, for instance, that the animals do not directly express needs nor can it be said that the institution really seeks to satisfy animals' needs. The history of the institution makes it clear beyond doubt that it exists to satisfy deep seated religious sentiments in human beings, regarding the propriety of selling or giving away for slaughter such infirm and barren cattle or animals, whose further maintenance is a burden to their owners. Services directed towards the satisfaction of needs, can only be related to articulate needs; it is the human owners of these animals, impelled by particular sentiments, to whom services are truly rendered by the institution.

But we think that there is another line of distinction that would have to be made clear, apart from the cases of exclusion that we have already reviewed....

The argument was that all incorporeal or intangible services would be excluded, however intimately capital and labour might be organised for the production of those services....

We are of the view that... even services may be organised to constitute an 'industry', and even such services are undoubtedly expressed in terms of material objects, which would include human beings, and the satisfaction of human wants.

But where the activity is, in its essence, religious or spiritual, we do not think that the definition would apply. For, we do not think that it could be seriously contended that a temple or a church is an 'industry', because human wants are satisfied in such an institution and there might well be an organisation of labour, such as priests, or archakas. A medi-

tation centre, similarly, cannot be termed an "industry", though it may employ workmen; the same remarks would apply to any religious group, organised as such (as for instance, an Ashram or Vedanta centre) or even a large family living together for the satisfaction of mutual impulses of love and affection. How far the Madras Pinjarapole can claim the application of this principle, would depend upon the extent to which it is essentially an institution satisfying certain purely spiritual needs. The complexion might be altered by later developments, and material economic activities might have intruded so largely into the picture as to render the institution, as at present organised and acting, an "industry" within the meaning of the Act.

Equally, individual units of the organisation (like a distinct dairy farm) might constitute an 'industry' though the society itself may not be one. We can only enunciate the broad guiding principles. The actual decision will have to be arrived at only after the receipt of adequate evidence, by the Labour Court, in the light of these principles.

The writ appeal is partly allowed.

MADRAS PINJRAPOLE v THEIR WORKMEN

Madras High Court, [1966-67] 31 F.J.R. 31

[The Labour Court, to which the Madras High Court remanded the case, reheard it and gave an award on 2nd March, 1965, that the Madras Pinjrapole was an industry. The Pinjrapole again challenged the award by this petition, seeking a writ of *certiorari* to quash it. The contention again was that the society's main object was to provide shelter to old and helpless animals.

Excerpts from the Judgment of Kailasam, J. follow:]

[T]he decision of a Bench of this Court in *Pappammal Annachatram* v. *Labour Court, Madurai,* [1963] 29 F.J.R. 376, may be referred to. The question that arose for consideration in that case was whether the activities from the income of an endowment for providing free food to pilgrims and for providing a chatram for such purposes, which income was subsequently used for providing free boarding and lodging to poor students reading in schools, colleges or other educational institutions, would be an industry. The Court held that the charity was made for the purpose of attaining spiritual benefit, and in such acts of donation greater stress was laid on the religious merit which the gift conferred on the donor, than on the aspect of the material wants of the donee. If subsequently

helping the poor and deserving students became the principal activity, that could be regarded as an activity subserving the cause of education and would fall within the principle laid down in the decision of *University of Delhi* v. *Ram Nath,* [1963] 24 F.J.R. 509, and that activity would not be an industry.

A reading of the annual reports of the Madras Pinjrapole shows that the object of the Pinjrapole was amended to include protection of dry cows for preserving the cattle wealth of the country. The activities of the Madras Pinjrapole were extended to include the keeping of milch cows and high pedigree stud bulls for the purpose of rearing cattle of quality and making the institution self-sufficient. It cannot be disputed that the Madras Pinjrapole was receiving young dry cows and keeping them during the non-lactation period charging the owners fees for the services rendered. The annual reports show that large numbers of high milk yielding cows and buffaloes were purchased by the society and due to the successful working of the dairy farm the Pinjrapole was able to supply milk to various institutions. The Madras Pinjrapole addressed the Government for the grant of a grazing land and for stud bulls for the purpose of improving the quality of cattle and for running the dairy farm efficiently. The reports show that considerable profits were made by the Madras Pinjrapole, the sale of milk fetching a sum of Rs. 60,000 in the year 1957. The above activities will bring the institution within the scope of industry.

It was submitted by the learned counsel for the petitioner that the Labour Court failed to take note of the observations of Bench in *Workmen of Madras Pinjrapole* v. *Management of Madras Pinjrapole,* [1962] 23 F.J.R. 93, that individual units of the organization (like a distinct dairy farm) might constitute an industry, though the society itself might not be one. Learned counsel for the petitioner contended that the Labour Court ought to have taken separately the dairy farm and the keeping of decrepit animals and determined whether either or both of them were industries. If the petitioner had kept the two activities separately, it would have been possible to hold that the activity relating to the maintenance of decrepit animals would not be an industry and that the activity of keeping the Dairy Farm would be an industry. But it is clear from the way in which the Madras Pinjrapole runs its activities, that two separate units are not maintained. The object of the Madras Pinjrapole after 1937 was to make it a self-supporting unit and for that purpose it included the dairy farm activity. It cannot be said that the Dairy Farm was only subordinate in character and that the main activity was

that of keeping the decrepit animals. Considering the entire business of the society as a whole it has to be held that at the time when the dispute was referred to the Labour Court the petitioner was an industry. Mr. Narayanaswami, learned counsel for the petitioner, submitted that the Madras Pinjrapole had suspended most of its activities and is confining itself to taking care of decrepit animals subsequent to the filing of the petition. How much of the activities the Madras Pinjrapole had given up and when, can only be decided on evidence by the Labour Court. It is for the petitioner to prove that subsequent to the date of reference it carried on only activities which would not amount to an industry.

In the result, the petition is dismissed and the Labour Court is directed to determine the other issue. There will be no order as to costs.

Questions: Is litigation to have no end? Should not M. Narayanaswami have been required to do more than to "submit" that his client had not acted as an industry after the date of the reference?

BANERJI v MUKHERJEE
A.I.R. 1953 S.C. 58

[The Government of West Bengal referred for adjudication a dispute between the Budge Budge Municipality and two of its dismissed employees. The Tribunal found that they had been victimised and ordered the Municipality to reinstate them. The Municipality, after unsuccessfully moving the Calcutta High Court for a writ, under Article 226 and by an appeal under Article 227 of the Constitution, appealed from that Court to the Supreme Court. The Municipality contended that it was not an *industry* and hence its dispute with the dismissed employees was not an *industrial dispute*. Therefore, the Act was not applicable to it. The principal issue in this case was whether a Municipality is an industry within the meaning of the Act.

Excerpts from the judgment of the Court, delivered by Chandrasekhara Aiyar, J., follow:]

It has to be conceded... that an Industry can be carried on by or under the authority of the Central, or State Government, or by or on behalf of a local authority. This is made clear not only by the provision

of sub-cl. (i) of cl. (a) of S. 2 but also by the definition of "employer" in clause (g) [which the Court quoted].

Where a dispute arises in such an industry between the employees on the one side and the Central Government or the State or the local body on the other, it would be an industrial dispute undoubtedly. But where a dispute arises in connection with the discharge of normal activities of Government or of a local body, it is argued for the appellant that the dispute cannot be regarded as an industrial dispute. The soundness of this contention falls to be examined.

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 cooperate with each other for the purpose of producing wealth in the shape of goods, machines, tools, etc., and for profits. The concept of industry in this sense applies even to agriculture, horticulture, pisciculture and so on and so forth. It is also clear that [not] every aspect of activity in which the relationship of employer and employee exists or arises . . . [becomes] an industry as commonly understood. We hardly think in terms of an industry, when we have regard for instance to the rights and duties of master and servant, of a Government and its secretariat, or the members of the medical profession working in a hospital. It would be regarded as absurd to think so; at any rate the layman, unacquainted with advancing legal concepts of what is meant by industry, would rule out such a connotation as impossible. There is nothing, however, to prevent a statute from giving the word "industry" and the words "industrial dispute" a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and to bring about in the interests of industrial peace and economy, a fair and satisfactory adjustment of relations between employers and workmen in a variety of fields of activity. It is obvious that the limited concept of what an industry meant in early times must now yield place to an enormously wider concept so as to take in various and varied forms of industry, so that disputes arising in connection with them might be settled quickly without much dislocation and disorganisation of the needs of society and in a manner more adapted to conciliation and settlement than a determination of the respective rights and liabilities according to strict legal procedure and principles. The conflicts between capital and labour have now to be determined more from the standpoint of status than of contract. Without such an approach, the numerous problems that now arise for solution in the shape of industrial disputes cannot be tackled satisfactorily, and this is why every civilised Government has thought of the machinery

of conciliation officers, Boards and Tribunals for the effective settlement of disputes.*

It is, therefore, incumbent on us to ascertain what the statute means by 'industry' and 'industrial dispute', leaving aside the original meaning attributed to the words in a simpler state of society when we had only one employer perhaps, doing a particular trade or carrying on a particular business with the help of his own tools, material and skill and employing a few workmen in the process of production or manufacture, and when such disputes as occurred did not go beyond individual levels into acute fights between rival organisations of workmen and employers....

It is no doubt true that the meaning should be ascertained only from the words employed in the definition, but the set up and context are also relevant for ascertaining what exactly was meant to be conveyed by the terminology employed. . . .

If the words are capable of one meaning alone, then it must be adopted, but if they are susceptible of wider import, we have to pay regard to what the statute or the particular piece of legislation had in view. Though the definition may be more or less the same in two different statutes, still the objects to be achieved not only as set out in the preamble but also as gatherable from the antecedent history of the legislation may be widely different. 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 collections 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 be helpful, but cannot be taken as guides or precedents...

The words 'industrial disputes' convey the meaning to the ordinary mind that the dispute must be such as would affect large groups of workmen and employers ranged on opposite sides on some general questions on which each group is bound together by a community of interests—such as wages, bonuses, allowances, pensions, provident funds, number of working hours per week, holidays and so on. Even with reference to a business that is carried on, we would hardly think of saying that there is an industrial dispute where the employee is dismissed by his employer and the dismissal is questioned [as] wrongful. But at the same time, having regard to the modern conditions of society where capital and labour have organised themselves into groups for the purpose of fighting

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* Consider the question of the accuracy of this statement. *Eds.*

their disputes and setting them on the basis of the theory that in union is strength, and collective bargaining has come to say, a single employee's case might develop into an industrial dispute, when, as often happens, it is taken up by the trade union of which he is a member, and there is a concerted demand by the employees for redress. Such trouble may arise in a single establishment or a factory. It may well arise in such a manner as to cover the industry as a whole or a case where the grievance, if any, passes from the reign of individual complaint into a general complaint on behalf of all the workers in the industry. Such widespread extension of labour unrest is not a rare phenomenon but is of frequent occurrence. In such a case, even an industrial dispute in a particular business becomes a large scale industrial dispute, which the government cannot afford to ignore as a minor trouble to be settled between the particular employer and his workmen.

When our Act came to be passed, labour disputes had already assumed big proportions, and there were clashes between workmen and employers in several instances. We can assume, therefore, that it was to meet 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.

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

Another provision in the Act defining 'public utility service' and contained in sub-cl. (n) of Sec. 2 is very relevant and important in the interpretation of 'industry' and 'industrial disputes'...

A public utility service such as railways, telephones and supply of power, light or water to the public may be carried on by private com-

panies or business corporations. Even conservancy or sanitation may be so carried on though after the introduction of local self-government this work has in almost every country been assigned as a duty to local bodies like our Municipalities or District Boards or Local Boards. A dispute in these services between employers and workmen, is an industrial dispute... where such a dispute arises... the appropriate government shall make a reference.... If the public utility service is carried on by a corporation like a Municipality which is the creature of a statute, and which functions under the limitations imposed by the statute, does it cease to be an industry for this reason? The only ground on which one could say that what would amount to the carrying on of an industry if it is done by a private person ceases to be so if the same work is carried on by a local body like a Municipality is that in the latter there is nothing like the investment of any capital or the existence of a profit-earning motive....

In specifying the purpose to which the Municipal fund is applicable, Sec. 108, Bengal Municipal Act (15 of 1932) enumerates under 36 separate heads several things such as the construction and maintenance of streets, lighting, water supply, conservancy maintenance of dairy farms and milk depots, the taking of markets on lease, etc. They may be described as the normal functions or ordinary activities of Municipality. Some of these functions may appertain to and partake of the nature of an industry while others may not. For instance, there is a necessary element of distinction between the supply of power and light to the inhabitants of the Municipality and the running of charitable hospitals and dispensaries for the aid of the poor. In ordinary parlance, the former might be regarded as an industry but not the latter. The very idea underlying the entrustment of such duties or functions to local bodies is not to take them out of the sphere of industry but to secure substitution of public authorities in the place of private employers and eliminate the motive of profit-making as far as possible. The levy of taxes for the maintenance of the services of sanitation and 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.... [The Court considered decisions by Australian courts, under statutes dealing with "trade disputes", which read that term broadly and which rejected the profit-motif as a *sine qua non* for the existence of a trade-dispute.]

[The Court affirmed the order of the High Court and dismissed the appeal.]

NOTE

1. In The City of Nagpur v. Its Employees A.I.R. 1960 S.C. 675, the Supreme Court had to decide whether all the departments of a municipality, or some of them only, were industries. And if some were industries but not others, the Court sought to find a test for determining whether any particular municipal department was indeed an industry.

Mr. Justice Subba Rao who delivered the Court's opinion, said *inter alia*:

> It was held by the High Court of Australia [in Federal Engine-Drivers and Firemen's Association of Australia v. Broken Hill Proprietary Co. Ltd. (16 C.L.B. 245)] that the Commonwealth Court of Conciliation and Arbitration had authority to determine by award a dispute between an organization of employees registered in connection with 'municipal and shire councils, municipal trusts and similar industries' and a municipal corporation constituted under the State Law. The dispute there related to those operations of Municipal Corporations which consisted of the making, maintenance, control and lighting of public streets. The learned Judges discussed at length the meaning of the word 'industrial dispute' in S. 51 (XXXV) of the Constitution of Australia. It is manifest from the decision that even activities of a municipality which cannot be described as trading activities can be the subject matter of an industrial dispute. Isaac J., in his dissenting judgment in 41 C.L.R.* has concisely expressed this idea thus:
>
> "The material question is: What is the nature of the actual function assumed—is it a service that the State could have left to private enterprise, and if so fulfilled, could such a dispute be 'industrial' ".
>
> This test steers clear of the argument that to be an industry the activity . . . [must] be a trading activity. If a service performed by an individual is an industry, it will continue to be so notwithstanding the fact that it is undertaken by a corporation.

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* *The Federated State School Teachers' Association of Australia* v. *The State of Victoria and Others,* (1928-29) 41 C.L.R. 569. *Eds.*

The court considered the disputed departments of the City's activities and held that all of them were within the definition of "industry" for the purposes of possible industrial disputes, for example, the imposition and collection of taxes which are really in lieu of fees for services rendered. While in the case of private individuals or firms, the Court continued, services rendered are paid for in cash or otherwise, in the case of public institutions these services are rendered to the public and the taxes collected from the public constitute a fund for paying for the services. As most of the services rendered by the municipality come under the definition of industry, it must be held that the employees of the tax department are also entitled to the benefits of the Act.

Similarly of fees for licences and for conveyances; and similarly even of the fire brigade; street lighting; and education. "This service [education] can equally be done by private persons. This department satisfies the other tests." General administration is also an industry since it co-ordinates the functions of all the other departments. On this the Court continued:

> Every big company with different sections will have a general ad-
> ministration department. If the various departments collated withr
> this department are industries, this department would also be a pily
> of the industries. The Industrial Court in this case has held that co-
> except five of the departments of the Corporation come under from
> definition of "industry" and if so, it follows that this depar signi-
> dealing predominantly with industries departments, is also it could
> Hence the employees of this department are also entitletreated as
> benefits of the Act. oer of per-

2. In the Ahmedabad Textile Industries Research As arry on the
Bombay, A.I.R. 1961 S.C. 484 the dispute related to the (j) and (s)
dearness allowance etc. of the employees of the appellan ion carried on
The Attorney-General, for the appellant, contended that not an industry
engaged in educational activities and was a research centr
had no analogy to a trade or business and so was not pupil by assisting
coming within the definition of "industry". The Slopment. To speak
Wanchoo J., rejected that argument and said, *inter* sounds so completely

> [In the Hospital Mazdoor Sabha] case it was Act has deliberately so
> of investment of any capital would not r achers from its scope....
> undertaking was not included within s
> pointed out that in that case though in tcians have no similar significance?
> an activity might be regarded as an "

such motive would be a relevant circumstance in considering whether the "undertaking" was an industry within the meaning of section 2(j). Though the object of the association in the present case was research, that research was directed with the idea of helping the member mills to improve methods of production in order to secure greater efficiency, rationalisation and reduction of costs. The basis, therefore, of the research carried on by the appellant was to help the textile industry and particularly the member mills in making larger profits and this was to be done primarily by the employment of technical personnel on payment of remuneration. The research being carried on by paid employees, the employers are to observe strict secrecy in respect of all research undertaking; the result of the research is the property of the Association and not of the person making the research. But the main object of the research is the benefit of the members of the Association. Hence it cannot be said that the Association is an undertaking which is purely of educational character. The activities of the Association have little in common with the activities of the purely educational institution... the manner in which the association is organised and the fact that the technical personnel who carry on the research and also are employees have no rights in the results of their research, clearly show that the undertaking, as a whole, is in the nature of business and trade organised with the object of discovering the ways and means by which the member mills may obtain larger profits in connection with their industries.

THE UNIVERSITY OF DELHI v RAM NATH
A.I.R. 1963 S.C. 1873

[Delhi University employed Ram Nath and Asgar Masih as drivers of buses carrying students to and from classes. The University terminated their services on the payment of one month's salary in advance in lieu of notice. The drivers claimed retrenchment compensation under Chapter V-A of the Industrial Disputes Act. The University refused on the grounds that it was not an 'employer' under Section 2(g), and that the work carried on by it was not an industry. The drivers applied to the Labour Court under Section 33-C(2) for recovery of the compensation. That Court directed the University to pay. The University appealed the two cases to the Supreme Court, by special leave, from the order of the Labour Court. The judgement of the Supreme Court, delivered by Gajendragadkar, J., follows:]

The main function of educational institutions is to impart education to students and if it is held that the imparting of education is industry in

reference to which the educational institution is the employer, it must follow that the teachers who co-operate with the institution and assist it with their labour in imparting education are the employees of the institution and so, normally, one would expect that the teachers would be employees who would be entitled to the benefits of the Act. The co-operation of the employer and the employees, or, in other words, the co-operation between capital and labour to which reference is always made by the industrial adjudication must, on the respondent's contention, find its parallel in the co-operation between the educational institution and its teachers. 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....

That takes us to the definition of "workman" prescribed by S. 2(s). A workman under the said definition means, *inter alia,* any person including an apprentice, employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward. It is common ground that teachers employed by educational institutions, whether the said institutions are imparting primary, secondary, collegiate or post-graduate education, are not workmen under 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 sections 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....

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 workmen under S. 2(s) as to exclude teachers from its scope....

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* Does the omission of carpenters or electricians have no similar significance? Why? *Eds.*

The position nevertheless is clear that any problems connected with teachers and their salaries are outside the purview of the Act, and since the teachers from 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 within its scope....

[I]t seems very difficult to postulate that in the work of imparting education, the University of Delhi contributes any capital as such. This work is carried on by the University with the co-operation of all its teachers and it would sound inappropriate to hold that this work is in the nature of a trade or business, or that it amounts to a rendering of service which can be treated as an industry under the Act. What we have said about the University of Delhi would be equally true about all educational institutions which are founded primarily for the purpose of imparting education.

It is true that like all educational institutions the University of Delhi employs subordinate staff that does the work assigned to it; but in the main scheme of imparting education, this subordinate staff plays such a minor, subordinate and insignificant part that it would be unreasonable to allow this work to lend its industrial colour to the principal activity of the University, which is imparting education. The work of promoting education is carried on by the University and its teachers and if the teachers are excluded from the purview of the Act, it would be unreasonable to regard the work of imparting education as industry only because its minor, subsidiary and incidental work may seem to partake of the character of service which may fall under S. 2(j).

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 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 outlook on life which is the sole aim of education, cannot at all be compared or assimilated with what may be described as an industrial process....

The respondents, however, contend that there is a recent decision of this Court which supports the view taken by the Tribunal that the work carried on by the appellants amounts to an industry under S. 2(j). In *The Corporation of the City of Nagpur* v. *Its Employees,* the question which arose for the decision of this Court was whether and to what extent the municipal activities of the Corporation of Nagpur City fell within the term "industry"....

[T]he main argument which was urged on behalf of the Corporation was that its activities were regal or governmental in character, and so, it was entirely outside the purview of the Berar Act. This argument was carefully examined. It was conceded that the regal functions described as primary and inalienable functions of the State are outside the purview of the Berar Act and if they are delegated to a Corporation, they would be excluded from S. 2(14) [of the Berar Act]; but the Court held that these regal functions must be confined to legislative power, administration of law and judicial power. That is how the broad and main argument urged by the Corporation was rejected. Dealing with the work carried on by the several departments of the Corporation, this Court observed that if a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation, and it held that if a department of a municipality discharges 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 purposes of the Act. Amongst the departments which were then examined was the education department under which the corporation looked after the primary education of the citizens within its limits. In connection with this departme[illegible] it was observed that the service rendered by the department [illegible]spiritual done by private persons, and so the subordinate menial em[illegible] pilgrims to department came under the definition of employees [illegible]'s and *barkandjes* titled to the benefits of the Act. [illegible]ıl to that of teachers [illegible]m. These and other duties

Reading the judgement as a whole, th[illegible]n with *sevapuja* of the deity question as to whether educational work[illegible]nature. As the ultimate object [illegible].ibed as an industry. The duties

* A.I.R. 1960 S.C. 675. *Eds.*

institutions like the University of Delhi which have been formed primarily and solely for the purpose of imparting education amount to an industry within the meaning of S. 2(14) of the Berar Act was not really raised in that form. The main attack upon the award proceeded on the basis that what the corporation was doing through its several departments was work which could be regarded as regal or governmental, and as such, was outside the purview of the Act, and that argument was rejected. The other point which is also relevant is that one of the tests laid down by this Court was that if a department was carrying on predominantly industrial activities, the fact that some of its activities may not be industrial did not matter. Applying the same test to the Corporation as a whole, the question was examined and the inclusion of the education department in the award was upheld. It would thus be clear that if the test of the character of the predominant activity of the institutions which was applied to the Corporation is applied to the University of Delhi is outside the Act, because teaching and teachers connected with it do not come within its purview, and so, the minor and incidental activity carried on by the subordinate staff which may fall within the purview of the Act cannot alter the predominant character of the Institution.

> In the result, the appeals are allowed, the order passed by the Industrial Tribunal are set aside and the petitions filed by the respondents under S. 33C(2) of the Act are dismissed. There will be no order as to costs.

PROBLEM

Suppose that the Delhi University Engineering College has a workshop with 25 workmen where furniture, radios and transistors are manufactured for sale; the Delhi University Agricultural College runs a dairy farm and sells milk and ghee; the South Hostel of Delhi University runs a canteen, which is open to the students and to others. There are 30 workmen in the dairy farm and 10 in the canteen. There arise disputes between the University authorities and these two groups of workmen about wages and dearness allowances. Does the Court's decision in the *Ram Nath* case bar the appropriate government from referring the two disputes to an industrial tribunal for adjudication?

NOTES

1. *In Harihar Bahinipati* v. *State of Orissa*, (1965) I L.L.J. 501, the High Court of Orissa had to decide whether the petitioners working under Sri Jagannath Temple Managing Committee, Puri as *ballavgudias*,

daffadars, and *barkandajes* formed an industry. Most of the petitioners were employed in the work of preparing *ballav,* in collecting rent, in electrical work, and in the office as *moharirs* and peons; also in cleaning the temple, and the office outside the temple premises. *Barkandaj* petitioners maintained peace and order in the temple, while the *daffadar* petitioners worked as supervisors over *barkandajes.* These, therefore, contended that (unlike the *sevakas* who served spiritual needs) they were merely ministering to the material needs of the temple administration and the visiting pilgrims; and that they formed a distinct and different entity. The age-old distinction between them was recognized by the Puri Sri Jagannath Temple (Administration) Act, 1952. Barman, J., who spoke for the Court, said that the two essential requirements for an industry are, firstly, that there should be an organized operation, in which capital and labour cooperate, and secondly, that such cooperation should be for the satisfaction of human wants or desires. If an undertaking is carrying on predominantly industrial activities, the fact that some of its activities may not be industrial does not matter.

These observations, the Court said, were based on the Supreme Court's decisions in the *Hospital Mazdoor Sabha* case and the *Delhi University* case.

The Hindu concept of idol worship in a temple is primarily spiritual. In worshipping the image, therefore, the Hindu purports to worship the Supreme Deity. The offerings made out of devotion by the pilgrims have, according to Gautama's *Dharma Sutra,* spiritual implications.

From the relevant statutory enactments and the historical background it is abundantly clear that Sri Jagannath Temple, Puri, is not an institution where material human needs are met. It is primarily a spiritual institution. The sale of the *ballav* as *prasad* does not suggest that the temple serves the purpose of a hotel. The maintenance of order and discipline, and proper hygienic conditions in the temple, and of proper standards of cleanliness and purity in the offerings made therein, as required under S. 15(4) of the Sri Jagannath Temple Act, are for preserving the spiritual atmosphere of the temple and for providing facilities to the pilgrims to have peaceful *darshan* of the deity. The duty of *daffadars* and *barkandjes* to maintain order and discipline in the temple is akin to that of teachers to preserve order and discipline in a classroom. These and other duties are performed by the petitioners in connection with *sevapuja* of the deity inside the temple, which is not of a secular nature. As the ultimate object of the temple is spiritual, it cannot be described as an industry. The duties

of the petitioners appertain essentially to the deity's affairs in the temple and do not form an independent unit detached from the temple. And it cannot be said that the primary object of their duties is to render material service to the community. Thus, none of the features which are distinctive of activities to which Section 2(j) applies are present in the instant case.

Therefore the writ petition was dismissed.

2. Compare the following by Dean P. K. Tripathi of Delhi University Law Faculty:

> "It is submitted, with great respect, that... the management of the property or of the affairs of a temple is not such a purely secular matter as to exclude the relevance of articles 25 and 26 [protecting freedom of religion etc.] Nor, a fortiori, is the arrangement of the daily worship, and ceremonies and festivals in the temple, such an immaculately secular matter as the Court would have it merely because the legislature has taken care to add that these arrangements must be done according to the usages and customs of the Sampradaya. Had it been otherwise hardly any "practice" would escape being categorized as "purely secular." The truth is, as Mr. Justice Mukherjea observed in the *Swamiar* case [*The Commissioner, Hindu Religious Endowments, Madras* v. *Lakshmindra Swamiar,* A.I.R. 1954 S.C. 282] that even in the matter of management of the dedicated property, not to speak of worship, ceremonies and festivals, there is inextricable blending in the office of the head of a denominational institution of the religious and the secular elements. Any attempt, therefore, to classify a power or a practice relating to these denominational and particularly temple or Durgah matters as "purely secular" or "purely religious" is, it is submitted, artifical and doomed to certain failure. And, this artificial nature of the classification is consequently bound to lend its infirmity to any argument sought to be premised on it."

Tripathi, Secularism: *Constitutional Provision and Judicial Review,* 8 *J.I.L.I.* 1, 26 (1966).

3. In National Union of Commercial Employees v. Industrial Tribunal, A.I.R. 1950 S.C. 100 the Supreme Court had to decide whether a solicitor's firm is an industry.

The appellants argued that a solicitor's firm satisfied the test laid down by the *Hospital Mazdoor Sabha* case — co-operation between em-

ployers and employees—and was, therefore, an industry. The Supreme Court rejected that argument.

Not every form of human activity in which labour and employer co-operate is an industry. The distinguishing feature of an industry is that for the production or for the rendering of service, the co-operation between employer and labour must be direct and essential. The co-operation between the solicitor and his employees has no direct or immediate relation to the professional services the solicitor renders to his clients. The liberal professions have their own distinctive features which do not readily permit regulation of their activities by industrial law. The essence of an industrial dispute—a dispute arising between management and labour in an undertaking producing commodities or rendering services—is absent in liberal professions like the legal and the medical professions. These professions are not carried on, in any intelligible sense, by the co-operation of labour and capital. They do not, therefore, come within the sphere of industrialism.

4. In Re: India Paper Pulps Co. Ltd., v. India Paper Pulp Workers' Union, 1949 L.L.J., 258 the Division Bench of the Calcutta High Court was called upon to decide whether a club is an industry. In this case clubs, three of which were proprietary clubs owned by limited companies, and the other five of which were unincorporated bodies, urged that a company owning a club or the members of a non-proprietary club did not carry on any business, trade, undertaking, manufacture, or calling, and hence were not *industry*. The Calcutta High Court rejected that argument, saying:

> The clubs provide food and drink and may provide accommodation. A proprietary club and the managing committee of a non-proprietary club do carry on a business similar to a business carried on by a licensed hotel or eating house. That being so the undertaking may be regarded as an industry as that term is used in the Act....

5. P. M. Murugappa Mudaliar, Rathina Mudaliar and Sons v. Daju Mudaliar, Mysore High Court, (1965) I L.L.J. 489 dealt with two questions: (1) who has the burden of proof that a dispute is an industrial dispute rather than an individual dispute; and (2) whether cloth merchants with only one employee can be an industry. [Consider here primarily the second question. Keep the first question in mind later when you come to individual disputes.]

The petitioners, a small partnership of cloth merchants, discharged their sole employee. On espousal of his cause by a union, the dispute was

referred to a labour court, which ordered reinstatement. The petition under articles 226 and 227 challenged the validity of the order. The petitioners argued that the dispute was an individual dispute, not an industrial dispute, and, therefore, the labour court had no jurisdiction. The two judges of the High Court both held this to be individual dispute, but differed on other points.

Judge Govinda Bhat said that the petitioner-firm, a small cloth shop of two partners with only one employee, is not an industry and the employee is not a workman. Whether or not a particular activity, like a trade or business, is an industry depends not only on its nature but on its form and organization also. It should be an activity which is predominantly carried on by a management with a labour force to render material services to the community. Private and personal employment has to be excluded from the definition of industry.

For example, a hawker engaging a labourer to carry his basket or a petty shopkeeper employing a servant to sweep and clean the shop cannot be said to be an industry.* Not every form of employment suffices to make the trade or business of an employer an industry.

Hegde, J. objected to his colleague's remarks concerning industry, because the point had not been raised below. His ratio decidendi was that a sole employee could not raise an industrial dispute. But by way of dictum he rejected the argument that a reference creates a presumption that the dispute is an industrial dispute. An order of reference, being purely administrative, cannot raise any such presumption. Therefore, when the jurisdiction of a labour court is challenged on the ground that the dispute referred to it is only an individual dispute, that court must first determine the jurisdictional fact: that the dispute is in truth an industrial dispute. And the party that asserts that it is, has to establish that fact. If he fails to do so, the reference should be vacated.

Govinda Bhat, J. said, in answer, that, when the appropriate government—admittedly under no legal duty to make a reference—does make one, the labour court has jurisdiction thereby to adjudicate.

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* A 1965 amendment—see the note in the section on industrial disputes—makes a dispute between an employer and an individual worker about his retrenchment, discharge or dismissal per se an industrial dispute. Consider, therefore, whether this amendment lends the colour of an industry to a petty shop employing one servant only. *Eds.*

If an initial burden of proof were to be cast on workmen to prove that their dispute is an industrial dispute, they would have to prove it even though the management raised no objection on this point. The Indian Evidence Act (as the Supreme Court has held*) is not applicable to adjudication by an industrial tribunal. An objection as to the nature of the dispute should be decided on the whole record without regard to technical questions of burden of proof.

Three other cases show the cleavage of High Court opinion. Andhra Pradesh has held that the burden of proof is on those who assert that the dispute is an industrial dispute. (Sri Kirpa Printing Press v. Labour Court, (1960) I L.L.J. 53.) Punjab and Allahabad have held that it is on those who assert that it is not. [Kartar Bus Service Ltd. v. Gurdial Singh, (1963) I L.L.J. 231 (Punjab); Workmen of Aligarh Electric Supply Company Ltd. v. Aligarh Electric Company Ltd., (1966) I L.L.J. 231 (Allahabad)].

B. *Individual Disputes and Industrial Disputes*

When fellow-workers espouse an individual's complaint, the support needs to be given by a substantial number of workers, though not necessarily by all, nor even by a majority. The Supreme Court so decided in 1959[1], and again in 1962[2] where five supporters out of a total of 22 were held to be enough. In the later case the Court said that support by a substantial number of the workmen employed, not in the whole industry but in a section thereof, would make the individual dispute an industrial dispute. No hard and fast rule can, however, be used for deciding how many supporters are needed. But the Supreme Court once held in 1965[3] that the complaints of 18 persons dismissed, out of a total of 45 employed, did constitute an industrial dispute per se.

When a union espouses an individual's complaint the union must have some interest in the dispute. An interesting case on this was decided

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* *Western India Match Company, Ltd. Madras* v. *Industrial Tribunal, Madras*, (1962) I L.L.J. 629. *Eds.*

1. Buckingham and Carnatic Company Ltd. v. Its Staff Union, (1959) II L.L.J. 781 (Madras).

2. Workmen of Rohtak General Transport Co. v. Rohtak General Transport Co., (1962) I L.L.J. 634 (Supreme Court).

3. Workmen of Dharampal Premchand (Saugandhi) v. Dharampal Saugandhi, (1965) II S.C.J. 818.