
(1982) 07 KL CK 0019
In the High Court Of Kerala

Bhaskaran

APPELLANT

Vs

Sub-Divisional Officer

RESPONDENT

Date of Decision : 28-07-1982

Acts Referred:

Constitution of India, 1950 — Article 19, 309, 310, 311
Industrial Disputes Act, 1947 — Section 10, 12, 17A, 2, 22

Citation : (1982) 2 KLT 248

Hon'ble Judges : M.P. Menon, J

Bench : Single Bench

Judgement

M.P. Menon, J.—The three petitioners are casual mazdoors of the Posts and Telegraphs Department. In the year 1979 alone, they had worked for 304, 302 and 299 days before the end of October. Exhibits P-1 and R1 orders confer on them certain preferential claims in the matter of appointment as regular employees. Their first complaint in this writ petition is that the respondents have failed to recognise those claims. The second complaint is that their engagement as casual labourers was stopped from 1-11-79 under oral orders, contrary to the provisions of Section 25F of the Industrial Disputes Act, 1947.

2. Exhibits P1 and R1 only confer some rights on casual employees to be absorbed as regular hands, as and when vacancies occur. The respondents have gone on record that the petitioners' rights would be recognised and given effect to, when vacancies arise. In view of this stand of the Department, it is unnecessary for this Court to give any directions in this regard.

3. Turning to the second complaint, Section 25F of the Industrial Disputes Act provides that no workman with continuous service for a year shall be retrenched without a month's notice and without payment of retrenchment compensation. Section 25G obliges the employer to retrench only the juniormost, and Section 25H insists that retrenched hands shall be given preference in the matter of re-employment. An oral order terminating engagement for the purpose of engaging others on a rotational basis and without payment of compensation, would

certainly offend these provisions. And there is no dispute that this is what the respondents attempted to do. But their case is that the Post and Telegraphs Department is not an industry as defined in the Industrial Disputes Act, and that Sections 25F, G and H are not attracted. They have a further case that even if the department is an industry, its employees governed by Service Rules framed under Article 309 of the Constitution stand outside the fold Of the Act. The provisions of the Act cannot apply to Government departments, even if they are carrying on industrial activities, it is said, so long as service conditions of the employees concerned are embodied in Service Rules.

4. The Act was placed on the statute book in 1947. Soon thereafter, the Government of Bombay referred for adjudication an industrial dispute about the claims of certain workmen of the Western India Automobile Association, for reinstatement. Alarmed at the prospect of being compelled to reinstate dismissed employees, the employers rushed to the Bombay High Court challenging the validity of the reference itself. Two contentions were raised: (i) that the Act applied only to undertakings carried on by Government and not to private undertakings, and (ii) it did not contemplate reinstatement. The case reached the Federal Court and both the contentions were repelled (See *W.I.A. Association v. Industrial Tribunal* 1949 L.L.J. 245. After more than three decades, the circle has now turned full, and we find a Government Department contending that the Act does not apply to them also, because of the alarming prospect of being compelled to comply with Section 25F. Who said that the top brass of public undertakings are not so efficient as captains of private enterprise ?

5. On the first question as to whether the Post and Telegraphs Department is an industry or not, it seems to me that the Act itself gives an emphatic answer in the affirmative. Section 22(1) of the Act provides that persons employed in public utility services shall not go on strike without giving notice to the employer. Sub-section (2) provides that employers of public utility services shall not also declare a lock-out without notice. Section 12(1) imposes an obligation on the conciliation officer to hold conciliation proceedings where the industry involved is a public utility service and a notice u/s 22 is given. It is also the duty of the appropriate Government to make a reference u/s 10(1), in such circumstances, unless it considers the nontice to be frivolous or vexatious. The Act makes a distinction between industries which are : public utility services and industries which are not; in the case of the former, conciliation is obligatory and is so reference, subject to the exception noted; in the case of the latter, conciliation and reference are ; both discretionary. Having thus placed public utility services on a special footing it is only natural that the Act attempts to define "public utility service" in Section 2(n), as follows :

[n] "public utility service" means-

[i] any railway service or any transport service for the carriage of passengers or goods by air;

- [ia] any service in, or in connection with the working of any major port or dock;
- [ii] any section of an industrial establishment on the working of which the safety of the establishment or the workmen employed therein depends;
- [iii] any postal, telegraph or telephone service;
- [iv] any industry which supplies power, light or water to the public;
- [v] any system of public conservancy or sanitation;
- [vi] any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification;

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification be extended from time to time, by any period not exceeding six months, at any time, if in the opinion of the appropriate Government, public emergency or public interest requires such extension.

Postal, telegraph and telephone services are thus named public utility services under the Act. They are industries to which the provisions of Sections 10, 12 and 22 directly apply. The P & T Department cannot declare a lock-out without notice; the employees of department cannot also go on strike without notice- In view of the above specific provisions directly dealing with employment in the postal and telegraph services, is it possible for anyone to suggest, with any amount of seriousness; that the P & T Department is not an industry under the I.D. Act.?

6. Sections 25F, 25G and 25H appear in Chapter V-A of the Act. And Section 25J provides :

25-J. Effect of laws inconsistent with this Chapter: [1] The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other law [including standing orders] made under the industrial Employments (Standing Orders.) Act, 1946 (20 of 1946;];

Provided that where under the provisions of any other Act or rules? orders or notifications issued thereunder or under any standing orders or under any award, contract of service or otherwise, a workman is entitled to benefits in respect of any matter which are more favourable to him than those to which he would be entitled under this Act, the workmen shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that he receives benefits in respect of other matters under this Act.

(2) For the removal of doubts, it is hereby declared that nothing contained in this Chapter shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance

with the provisions of this Chapter.

The provisions of Sections 25F. and H have thus overriding effect; anything inconsistent contained in any other "law" which must necessarily include Service Rules, cannot be given effect to. They have simply to be ignored, if the establishment in question is an industry- This, according to me, answers also the second point raised by the department, on the basis of Service Rules.

7. But a king must have a coronation, a nobleman, a funeral procession; and in these days, a decision must also have precedents to lean on. In the present case, they are available in plenty; so plenty, that counsel on both sides could pick out passages from here and there to buttress their rival lines of argument. The course of case law was not along a dull, straight, bumpy road; there were twists and turns, ascents and descents, with even exciting hairpin bends. In *Bangalore Water Supply and Sewerage Bd. v. Rajappa* 1978 1 L.L.J. 349. Krishna Iyer J. traced its development in chronological sequence; but as this decision is also part of the case law on the subject, I shall briefly refer to what the Courts had said before the Sewerage case, and then attempt to ascertain what that case has said about Government servants employed in industry.

8. The point raised in *D.N. Banerji v. P.R. Mulkherjee* 1953 1 L.L.J. 195, was whether a Municipality discharging its duties in connection with local self-government, could be treated as an "industry" as defined in the I.D. Act. The argument was that disputes connected with the discharge of the normal activities of Government, and consequently of local self-government also, were outside the purview of the Act. The Supreme Court did not accept it. The Court observed that though a layman could not think in terms of an industry when the rights and duties connected with the functioning of a government or its secretariate were involved, there was nothing to prevent a statute from giving the word "industry" a wider and more comprehensive import in order to meet the requirement of rapid industrial progress. The purpose of the Act was to resolve disputes between capital and labour in the interests of industrial peace. The idea behind entrusting local self-government functions to Municipalities was not to take them out of the sphere of industry, but to secure the substitution of public authorities in the place of private employers and to eliminate profit motive as far as possible. Taxation by Municipal bodies was designed only to make up for the absence of capital, so that services like sanitation, conservancy and water supply could be effectively undertaken. Therefore, it was only proper to hold that disputes arising between Municipalities and their employees in branches of work analogous to business or trade could fall within the definition of "industrial dispute" in the Act.

9. *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, was the next important decision of the Supreme Court. Where the concept of "industry" in the context of governmental functions was further analysed. The employer there was the Government running a group of hospitals. It was contended that governments establish and maintain hospitals as part of their function to promote the welfare of the people, and not as economic propositions,

with profit motive. There was nothing analogous to trade or business, it was urged. The Court rejected these contentions. After a careful examination of the words used in Section 2(j) the Court reached the conclusion that the concept behind the statutory definition was very wide, and that all forms of organised activity for the production of goods and the rendering of services, and involving cooperation between the employer and the employed, could be brought within its fold. Profit motive was not decisive; you have to look at the character of the activity, and not the person presiding over it or his motive. The width of the definition could be cut down only with reference to the scope and object of the enactment; and examined from that stand point, domestic services on the one hand, and services connected with the purely regal or sovereign functions of the State (such as administration of justice, maintenance of law and order and legislation) could be excluded, but not other governmental activities. There were indications in the Act itself that all activities undertaken by a Government were not out-side its scope.

10. In *Corpn. of City of Nagpur v. Its Employees* 1960 1 L.L.J. 523, the Court reiterated these propositions and once again firmly rejected the contention that governmental and municipal functions were not industries. Some of the departments of the corporation were engaged in activities partly industrial and partly non-industrial and the Court held that in all such cases, the predominant activity was to be taken note of. If an activity carried on by Government would be an industry in the hands of a private employer there was no reason to exclude it from the definition for the sole reason that the employer was a Government. Applying the above principles, the Education Department, the Health Department, the General Administration Department and even the Taxation Department of the Corporation were held to be industries.

11. The *Hospital Mazdoor Sabha* case placed two limitations on the wide sweep of "industry" by looking at the object of the Act. Adopting similar lines of reasoning, further limitations were attempted in two other cases that followed : namely, *National Union of Commercial Employees v. Meher* 1962 1 L.L.J. 241 and *University of Delhi v. Ram Nath* 1963 2 L.L.J. 335, In the first, the Supreme Court held that a solicitor's office would not be an industry, because services rendered by solicitors depended on their personal accomplishments and not on the co-operation received from their staff. In the second, the Court held that education in general was also not an industry. The test of co-operation between employer and employed would be satisfied in the case of educational institutions, but teachers were not workmen as defined in the Act, as they were rendering only intellectual service, and not doing manual, clerical or technical work. And if the bulk of those co-operating with the employer were outside the Act, the theory relating to the predominant nature of the activity would take out other university employees also from the scope of the Act.

12. Exemptions and exclusions from the broad sweep of "industry" were further found in the *Secretary, Madras Gymkhana Club Employees' Union Vs.*

Management of the Gymkhana Club, and the Cricket Club of India case 1969 I L.L.J. 227, the theory being that services rendered in clubs were for the pleasure of the members themselves. The services were not for sale, they were not available for outsiders, and the activities were, therefore, not analogous to trade or business. Apparently, they were something like domestic services. The Madras Gymkhana Club provided facilities for golf, tennis, billiards, dances, dinners; and refreshments and employed a good number of officers, caterers and other staff. The Cricket Club of India was a "huge undertaking" with big budgets, an army of staff and profit-making adventures, and all services were being rendered by hired employees, on payment. But on the theory of self-service, clubs were held to be outside the club of industrial entrepreneurs.

13. Commencing from Banerji v. Mukherjee 1953 I L.L.J. 195 and ending with the Cricket Club of India 1969 I L.L.J. 227, the trend of judicial thought was that the term "industry" had to be widely construed, though exemptions and exclusions could be profusely engrafted on different grounds. But in the The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi, Bench of six Judges of the Supreme Court thought of re-examining the whole concept by directly tackling the definition clause itself once again, with a difference in emphasis. Their Lordships held that:

Before an industrial dispute as defined in Section 2[k] can be raised there must be first established a relationship of employers and employees associating together, the former following a trade, business, manufacture, undertaking or calling of employers in the production of material goods and material services and the latter following any calling, service, employment, handicraft, or industrial occupation or avocation of workmen in aid of the employers' enterprise. It is not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in a commercial sense.

That is, you must first look at the activity to find out whether the employers are engaged in any trade, business, manufacture, etc., which could be considered as a calling of employers; and then you should further find out whether the employees are engaged in avocations in aid of the employers' enterprise. The enterprise must also be analogous to trade or business in a commercial sense. From this formulation, it was easy to conclude that hospitals run by Government and even by private associations ("not on commercial lines but on charitable lines or as part of the functions of Government") were not industries.

14. The Safdar Jung case thus made a serious departure from the view till then prevalent that in order to fall within the definition of "industry", it was not necessary to find an activity analogous to trade or business understood in a commercial sense. It also made a departure in respect of activities undertaken by Government as part of governmental functions. It was in this background that the Sewerage case (supra) came up before a Bench of seven Judges of the Supreme Court. The leading judgment was rendered by Krishna Iyer, J., with whom Bhagwati and Desai, JJ., agreed. Beg, C.J., was "in general agreement

with the line of thinking" adopted by Krishna Iyer, J., but made some separate observations. Chandrachud, C.J., also concurred, with certain clarifications. Jaswant Singh and Tulzapurkar, JJ., were, however, inclined to limit the scope of "industry", as had been done in some of the earlier decisions. Except in regard to certain aspects, therefore, the law on the subject, as it now stands, is the one reflected in the judgment of Krishna Iyer, J. The conclusions reached by his Lordship, so far as is relevant for present purposes, were these:

(i) the term "industry" is of wide import. All systematic activity, organized with the co-operation of employers and employees, for the production and distribution of goods and services, will be "industry". Absence of profit motive is irrelevant in public and private ventures alike. The test is functional, and motives like charity and philanthropy are irrelevant;

(ii) the ideology of the Act is industrial peace, and the sweep of the definition cannot be cut down in the case of professions, clubs, educational institutions, charitable projects and kindred adventures;

(iii) where mixed activities are involved, the predominant nature of the activity, as explained in Nagpore Corporation case must prevail;

(iv) only sovereign functions of the State, strictly understood, can qualify for exemption; other governmental activities are covered by the Act, if the functional test is satisfied;

(v) even in departments discharging sovereign functions, if there are units which are severable and which are engaged in industrial activities, Section 2[j] of the Act can be attracted;

(vi) constitutional and enacted legislative provisions can remove from the scope of the Act activities which are otherwise industrial; and

(vii) Safdarjung and Gymkhana case were wrongly decided; Hospital Mazdoor Sabha had made the right approach.

15. To those who thought that the Industrial Disputes Act was legislative rainbow gone berserk as though the draftsman had dipped his brush in an aurora of incongruities and smeared it at will, the Sewerage case furnished a complete answer: the outlines were drawn with precision, and the contours will be illuminated. The procession of precedents has reached a destination, at least for the time being; and the question is where the Post and Telegraph Department stands in the scheme of things.

16. The learned Government Pleader is unable to place his fingers on any passage from any of the aforesaid decisions, to support the contention that the department is not an industry. On the other hand, some of them contain definite pronouncements to the contra. Paragraphs (15) and (16) Banerji v. Mukherjee (supra) make specific reference ; to Sections 2(n), 10 and 22 of the Act to hold that a dispute in public utility services like the Railways and Telephones will be an

industrial dispute as defined in the Act. Even *Sufdarjung case* (supra) which took the most restricted view, conceded in paragraph (25) that the "named services" in Section 2(n) would answer the test of industry. Paragraph (46) of the *Sewerage case* (supra) shows that Krishna Iyer, J., had drawn inspiration from the decisions of a committee of the ILO suggesting that postal and telecommunication services could not be placed outside the area of collective bargaining; and in paragraph (51), his Lordship observed that even in respect of Government departments discharging "essential constitutional functions", industrial units severable from such functions could be marked out as industries. The Post and Telegraph Department has nothing to do with the constitutional functions of the State. There is no need to sever; it stands as a separate department, discharging functions analogous to trade or business even in a commercial sense. In my opinion, all the precedents are in favour of holding that the 10 department is an industry directly and specifically covered by the Act.

17. The next argument, as already noticed is that even if the Act applies to the department its employees governed by service rules framed under Article 309 of the Constitution should be placed beyond the reach of its tentacles, And counsel frankly conceded that apart from a few sentences from the judgments in the *Sewerage case*, there is nothing which could be urged in support of this contention also. The decision in that case (as reported in the SCC volumes) runs to 187 paragraphs, and it is astonishing that anyone could pick out half a dozen sentences therefrom to argue for a position directly negated by it. I shall, however, examine those passages, but not before considering one or two other relevant aspects.

18. Section 2(s) of the Act lays down that every person employed in an industry to do skilled, unskilled, manual supervisory, technical or clerical work is a "workman", subject to the exceptions specified. The generality of postal employees do not come within these exceptions; the mazdoors, the telephone operators, the telegraphists, technicians, clerks and supervisors of the department are workmen. If they are workmen, how do they cease to be so because service rules are also there to govern some of their service conditions? Employees exempted from Section 2(s) include policemen, prison officers and personnel subject to the Army Act, the Air Force Act and the Navy (Discipline) Act. These exempted employees, it is well-known, are also governed by service rules. Parliament did not think that the applicability of service rules alone would be sufficient to place them outside the definition clause; that is why it sought to exclude policemen, prison officers and some categories of defence personnel, by specific exemptions. Is not the implication clear that other Government servants are covered by the definition, despite applicability of service rules, if they are employed to do unskilled, skilled and clerical work in an industry?

19. Section 9A of the Act prohibits alteration of service conditions of workmen without notice; but proviso(b) exempts classes of Government servants, governed by service rules, from its operation. Thus Parliament had addressed

itself to the question whether workman governed by service rules should be excluded from the purview of the Act, and it decided to exempt them only for the : limited purposes of Section 9A. In respect of all other matters, and for all other purpose Parliament thought that they were not to be excluded. Is this not another clear indication that service rules are no protective armour for Government departments, attempted to be made out? 20. I have already referred to the over- riding effect of Section 253 of the Act. So far as Chapter V-A of the Act is concerned, its terms are applicable to all workmen notwithstanding any other law. Section 25F with which we are concerned in this case appears in Chapter V-A. Service Rules are thus prima facie powerless to deny the benefit of Section 25F to postal employees who are workman as defined in the Act.

21. Turnig now to the Sewerage case and the passages relied on, the first sought to be pressed into service is the observation of Krishna Iyer, J., in paragraph (46). Referring to the Nagpore Corporation 1978 I L.L.J. 379 case his Lordship observed :

The Court proceeded to carve out the negative factors which, notwithstanding the literal width of the language of the definition, must, for other compelling reasons, be kept out of the scope of industry. For instance, sovereign functions of the State cannot be included although what such functions are has been aptly termed "the primary and inalienable functions of a constitutional government". Even here we may point out the ineptitude of relying on the doctrine of regal powers. That has reference, in this context, to the Crown's liability in tort and has nothing to do with Industrial Law. In any case, it is open to Parliament to make law which governs the State's relations with its employees. Articles 309 - 311 of the Constitution of India, the enactments dealing with the Defence Forces and other legislation dealing with employment under statutory bodies may, expressly or by necessary implication, exclude the operation of the Industrial Disputes Act, 1947. That is a question of interpretation and statutory exclusion ; but, in the absence of such provision of law, it may indubitably be assumed that the key aspects of public administration like public justice stand out of the circle of industry. Even here, as has been brought out from the excerpts of ILO documents, it is not every employee who his 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.

The Nagpore Corporation case had taken the view that the inalienable functions of Government were outside the pale of industry. What Krishna Iyer, J., wanted to clarify in the above passage was that Parliament could enact laws, under Article 309 and other constitutional heads, to exclude other Government functions also from the operation of the I.D. Act. And it was added that "in the absence of such provisions of law", only key aspects of public administration "like public justice" would stand outside the circle of industry. In other words, it was

possible to exclude Government servant altogether from the purview of the Act by appropriate legislation; but till that was done, only essential constitutional ("inalienable") functions like administration of justice, as laid down in the Nagpore Corporation case, could be excluded. His Lordship was referring only to the possibility of enacting other laws to cut down the sweep of the I.D. Act in its application to Government servants, noticing at the same time that such laws had yet to be enacted. There is nothing in the observation to suggest that the mere possibility of making laws (as distinct from service rules) in future would affect the operation of the Act against Government servants who are otherwise workmen. The position was re-stated with clarity in paragraph 143(d) of the judgment.

22. Reference is then made to paragraphs 163 and 164 from the judgment of Beg, C.J. Those paragraphs read :

163. I would also like to make a few observations about the so-called "sovereign" functions which have been placed outside the field of industry. I do not feel happy about the use of the term "sovereign" here. I think that the term "soveriegn" 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 His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, supported by a quotation from Ernest Barker's Social and Political Theory. Again, the term "Regal" from which the term "sovereign" functions appears to be derived, seems to be a misfit in a Republic where the citizen shares the political sovereignty in which he has even a legal share, however small, inasmuch as he exercises the right to vote. What is meant by the use of the term "sovereign" in relation to activities of the State, is more accurately brought out by using the term "governmental" functions although there are difficulties here also inasmuch as the Government has entered largely new fields of industry. Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication.

164. 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.

Obviously, his Lordship was considering as to what "sovereign functions" could be placed outside the field of industry. After holding that such functions pertain to "the sphere of ultimate decisions", it was suggested that services governed by

separate rules and constitutional provisions, such as Articles 310 and 311. could possibly be excluded. It appears to me that his Lordship was also referring only to the possibility of excluding some services, as a measure of public policy, by appropriate legislative measures, and not attempting to hold that such services stand excluded even now. That is clear from paragraph (164) where reference is made to a possible contention (It may be contended") based on the principle that the special excludes the general. At any rate, there is no pronouncement that service rules automatically place Government servants outside the field of industry. No provision of any service rule has also been brought to my notice, which makes even an attempt at such exclusion.

23. On the other hand, Chandrachud, C.J., had taken the logical step, if I may say so with respect, of emphatically stating that once the functional test was accepted, there was no further scope for excluding governmental activities from the sphere of industry, on the ground that they were activities undertaken by the State in exercise of its sovereign functions. His Lordship said:

One of the exceptions carved out by the Court is in favour of activities undertaken by the Government in the exercise of its inalienable functions under the Constitution, call it regal, sovereign or by any other name. I see no justification for excepting these categories of public utility activities from the definition of "industry", If it be true that one must have regard to the nature of the activity and not to who engages in it, it seems to me besides the point to enquire whether the activity is undertaken by the State, and farther, if so, whether it is undertaken in fulfilment of the State's constitutional : obligations or in discharge of its constitutional functions. In fact, to concede the benefit of an exception to the State's activities which are in the nature of sovereign functions is really to have regard not so much to the nature of the activity as to the consideration who engages in that activity; for, sovereign functions can only be discharged by the State and not by a private person. If the State's inalienable functions are excepted from the sweep of the definition contained in Section 2(j), one shall have , unwittingly rejected the fundamental test that it is the nature of the activity which ought to determine whether the activity is an industry. Indeed, in this respect, it should make no difference whether; on the one hand, an activity is undertaken by a corporate body in the discharge of its statutory functions or, on the other, by the State itself in the exercise of its inalienable functions.

The essence of the matter is that if you are able to infer from the definition clause, read along with the other provisions of the Act, that every organised activity carried on with the co-operation of employers and employees for production of goods or for rendering services is an industry, you have to apply that yardstick to governmental activities also, unless any exemption is recognised by the Act itself or other laws. To cut down the concept by carving out exceptions in favour of certain activities, whether governmental, charitable, self-serving or philanthropic, would be to undermine the very concept you have

painstakingly evolved. And even that can be done only if Courts can trespass into the field of policy. His Lordship added:

the problem is far too policy oriented to be satisfactorily settled by judicial decisions.

24. The argument that the special would exclude the general, a question left open by Beg, C.J., can easily be answered with reference to Section 2(s) and Section 9A of the Act, as already seen. Parliament was aware of both the special and general when these provisions were enacted, and it thought that Service Rules (the Special) should not exclude the General (I.D. Act); and where Parliament has unmistakably disclosed such an intention. Courts cannot import rules of constrution to conclude otherwise.

25. Counsel for the department thinks that postal employees should not be given the "double benefit" of the service rules and the rules of industrial law. This plea springs from a mis-conception as to the nature of the two rules. Service rules are framed by the employer and imposed on the employees, whether they like them or not. They may include some benefits, but they also impose duties and restrictions. Employees may like to have the benefit of better terms, but they cannot claim it within the framework of the service rules. But the I.D. Act is based on the theory that workmen can collectively bargain for better terms. If they do so, the resultant dispute could be resolved either by conciliation or by adjudication, i.e., through a consensual process or a process where the workmen could have their say. The I.D. Act was not placed on the statute book to confer "benefits" on workmen (Chapter V-A was introduced only in 1953). As the Act originally stood, and as it stands even now, it is essentially a piece of legislation designed to find a peaceful solution for problems arising from collective bargaining. The imposition of terms by the framing of service rules by the employer, and the modification of terms by conciliation or adjudication, notwithstanding the employer's objections, operate in different areas. The real question is not of recognising double benefits, it is one of meeting the desire of working men and women for better] benefits. Even otherwise, it is for the State to act if it thinks that Government servants who are also workmen, should not get] double benefits. It can amend the I.D. Act or bring in other legislation, as suggested by Krishna Iyer, J., and Beg, C.J., instead of calling upon the Courts to rescue it from a situation which is its own creation.

26. The modern State is not a simple mechanism to safeguard the country from external aggressions and internal disturbances; it is a against performing multifarious functions. It builds dams, construct railways, operates buses, flies planes, digs canals, generates electricity, distributes essential articles, carries letters establishes schools, colleges, ports and poor homes. It is active in the field of mining, banking, insurance, shipping and fishing. It sets up factories and workshops, markets and fairs, gas and gas work, hotels and hospitals, libraries and museums. Under Article 19(6) of the Constitution, it can carry on any trade, business, industry or service to the exclusion of others. The Directive Principles

in Part IV require it to secure work for all by "economic organisation", to provide for free and compulsory education, and to organise agriculture and animal husbandry on scientific lines. The Central and State Governments, together with corporations controlled by them, employ the largest number of workers in the country. When these workers start agitating for better service conditions, the Industrial Disputes Act pro-provides for settlement of the resultant disputes through the peaceful process of conciliation or adjudication, so that the factories, fields and offices are spared of pitched battles and the flexing of muscles. The machinery provided by the Act is a safety valve to avoid explosions, and ensure the supply of goods and services even during movements of acute differences or disputes. If the State thinks that the safety valve has to be removed, let it do so directly, on its own responsibility, by suitable legislative measures, instead of inviting the Courts to misconstrue the statute by reading into it personal predilections and individual philosophies.

27. That the State itself is not ready to take such an extreme step is the indication one gets from the Industrial Disputes (Amendment) Bill, 1982 now before Parliament. The bill is intended to amend the I.D. Act; the term "industry" is itself being redefined as any systematic activity carried on by the co-operation of employers and employees for production, supply or distribution of services, including activities undertaken without investment of capital or without profit motive. Educational, scientific and charitable institutions are sought to be excluded, along with hospitals and dispensaries; but as to governmental activities, the proposal is to exclude only activities relatable to sovereign functions" including departmental activities of the Central Government dealing with "defence research, atomic energy and space" Other governmental activities are not being left out, whether the concerned employees are governed by Service Rules or not. The scope of the exemption in Section 9A is not being enlarged, and only police, prison and defence personnel are excluded from Section 2(s). Section 2(n) is left Untouched. The powers that be are apparently still unwilling to protect the Posts and Telegraphs Department from the invasion of industrial law.

28. Sections 2(a), 2(g), 2(n), 2(s) 9-A. 10 and 22, the proviso to Section 17A, and the entries In the First Schedule are all indications that the provisions of the Act will apply to governmental activities, if such activities are of the nature referred to in the Hospital Mazdoor Sabha and the Sewerage cases. The Posts and Telegraphs Department is, therefore, an industry. The petitioners who are casual mazdoors are unskilled workers engaged in such an industry. I, therefore, declare that their services cannot be terminated except in accordance with the provisions of Section 25F of the Act. and orders of termination orally passed without regard to the said provisions, shall have no effect.

29. Original petition allowed as above. No costs.