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**(2006) 01 JH CK 0036**

**In the Jharkhand High Court**

**Case No :** Writ Petition (L) No. 4917 of 2005

Harsh Vardhan Mathur (H.V. Mathur) APPELLANT

Vs

Xavior Labour Relations Institute (or XLRI) RESPONDENT

**Date of Decision :** 17-01-2006

**Acts Referred:**
Bihar Shops and Establishments Act, 1953 — Section 26(2)

**Citation :** (2006) 109 FLR 617 : (2006) 2 JCR 90

**Hon'ble Judges :** R.K. Merathia, J

**Bench :** Single Bench

**Advocate :** Rajiv Ranjan, for the Appellant; I. Sinha, for the Respondent

**Final Decision :** Dismissed

## Judgement

R.K. Merathia, J.—The petitioner has challenged the judgment and award dated 29th March, 2005 passed by the Presiding Officer, Labour Court Jamshedpur in B.S. Case No. 5 of 1994, whereby and where-under, the petitioner''s application, u/s 26(2) of the Bihar Shops and Establishment Act, 1953 (the Act for short), has been rejected on the ground of if being not maintainable.

2. Learned counsel for the petitioner submitted that apart from imparting education, respondent is undertaking other activities by selling its services, which has got an element of business and thus it is an establishment under the Act. He relied on the judgment reported in The Management of the Tata Iron and Steel Co. Ltd. Vs. Chief Inspecting Officer and Others, , and submitted that the activities undertaken by the respondent other than the educational activities are not incidental to education and, thus, even in the absence of motive of profit the respondent is an establishment under the Act.

3. Mr. Sinha appearing for the respondent submitted that even according to the petitioner, the respondent has been running the institution for imparting Post Graduate Diploma in Business Management and diploma course in Personnel Management and Industrial Relations, and he was a Professor under it. He

challenged his apprehended superannuation by filing suit, being Suit No. 75 of 1994. before Munsif. He further submitted that the respondent is a Management Institute and several activities are undertaken by it in connection with education. He further submitted that for running institution, the respondent-institute has to generate funds. He further submitted that the petitioner himself admitted that the institute is not profit oriented. If there is surplus of income, over expenditure, it cannot make the respondent an establishment under the Act. He relied on the judgment reported in AIR 2001 SC 380 : 2001 (1) JCR 1, Ruth Soren v. Managing Committee, East I.S.S.D.A. and Ors. and submitted that educational institution is not covered under the meaning of the establishment under the Act. He pointed out to Paragraph-89 of the judgment reported in (2005) 6 SCC 537, P.A. Inamdar and Ors. v. State of Maharashtra and Ors. which reads as follows-

89. Education, accepted as a useful activity, whether for charity or for profit, is an occupation. Nevertheless, it does not cease to be a service to society. And even though an occupation it cannot be equated to a trade or a business." Therefore, he submitted that the respondent-institute is not covered under the definition of establishment under the Act.

4. Mr. Sinha lastly submitted that in the said judgment of Management of Tata Iron and Steel Co. Ltd. v. Chief Inspecting Officer and Ors. (supra), it was held that the hospital was an establishment under the Act, and that this judgment is of no help to the petitioner.

5. In the circumstances and the legal position, noticed, above, I find no reason to interfere with the impugned judgment/award.

6. In the result, this writ petition is dismissed.

 