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**(1977) 08 KL CK 0011**  
**In the High Court Of Kerala**

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| Keraleeya Ayurveda Samajam Hospital and Nursing Home | APPELLANT  |
| Vs                                                   |            |
| Workmen and Others                                   | RESPONDENT |

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**Date of Decision :** 10-08-1977

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 2(j)

**Citation :** (1978) 1 ILR (Ker) 116 : (1979) 1 LLJ 115

**Hon'ble Judges :** Chandrasekhara Menon, J

**Bench :** Single Bench

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## Judgement

Chandrasekhara Menon, J.—In this case I had delivered the judgment on 16th March, 1977, dismissing the O.P., on the basis of the decision of the Supreme Court in The Workmen of Indian Standards Institution Vs. The Management of Indian Standards Institution, . I might state here that I had not the advantage of hearing the counsel for the petitioner at that time, before the above judgment was dictated and subsequently signed by me. It was brought to my notice by the learned Counsel for the petitioner that he was absent when the case was taken up as he was engaged in another Court, and in the circumstances he requested that the matter be reheard. Therefore, I posted the case for being spoken to and the matter was reheard. Though I am taking the same view now which I had taken earlier, it would only be proper that I revise my judgment so that all the points urged by the learned Counsel is dealt with therein.

2. The question raised in this original petition is whether the Keraleeya Ayurveda Samajam Hospital and Nursing Home, Shoranur, a society registered under the Societies Registration Act will come within the ambit of the word " industry" as defined in the Industrial Disputes Act (hereinafter referred to as the Act). The award passed in the matter by the Industrial Tribunal, Alleppey was on a reference of the dispute between the Keraleeya Ayurveda Samajam Hospital and Nursing Home and the workmen of the Keraleeya Ayurveda Samajam Hospital and Nursing Home represented by the Secretary, K.A. "Samajam Employees" Union, Shoranur. The Industrial Tribunal had come to the conclusion that the

institution is an industry and this decision is attacked in this writ petition.

3. It is pointed out by the petitioner that the petitioner--society was formed for the objects specified below :

(a) To open dispensaries and hospitals with a view to grant medical aid and relief to the sick under the Ayurvedic system and to prepare, manufacture and distribute medicine.

(b) To encourage and promote the study and practice of Ayurvedic medicines and surgery by establishing colleges and schools and to carry on research in the same and train apprentices with special reference to the treatments followed in Kerala.

(c) To form and maintain a Library of medical treatises and works of authority and print and publish medical books and to open and maintain a garden of medicinal plants and herbs.

(d) To make such other arrangements as may be found necessary for the attainment of the objects (a) to (c) above setforth.

It is in furtherance of these objects the petitioner is conducting a hospital, nursing home, pharmacy and a medical college. It is also said that the petitioner carries on research in the field of treatment and medicines according to the Ayurvedic system of medicine. The income derived by the petitioner from its institutions and by grant from the Government is utilised for the furtherance of these objects. No dividends are declared or paid by the petitioner to anyone.

4. It is further pointed out that the petitioner runs a hospital with 19 cottages and 12 single rooms for inpatients. Patients who do not require hospitalisation are treated as outpatients. On an average about 8,000 patients get treated in the hospital in an year including out patients, and only nominal charges are collected for the cottages and single rooms let out. Further it is stated that in the medical college run by the petitioner there are about 160 students studying Ayurvedic system of medicine. The total amount collected by the petitioner from patients by way of renting and service charges for the year 1973 was Rs. 14,109 for the year 1974 Rs. 22,922 and for the year 1975 it was Rs. 20,379. The amount spent by the petitioner for the college for the year 1972 was Rs. 17,183, 1974 Rs. 18,863 and 1975 Rs. 25,357. In the year 1973 the petitioner distributed medicine worth Rs. 4,341 in 1974 Rs. 4,285 and in 1975 Rs. 5,121 free to deserving patients. Besides these activities, the petitioner also conducts a herbarium. The Samajam collects Rs. 2 to 7-50 per cottage per day and depending on the size of the cottage, it would be Re. 1 per single room per day for four single rooms. 8 single rooms are given free to deserving cases. The petitioner also collects Rs. 5 as service charges per week from patients who use the cottages. The petitioner manufactures ayurvedic medicines and sells them to the public purely as incidental to the aforesaid activities. The net profits from this activity is again utilised for the aforesaid institutions. The Samajam does not

charge anything for the medical advice given by the specialist in Ayurvedic system of medicine to any of the patients.

5. In the original petition a gist of profit and loss account of the petitioner for the years 1965 to 1974 are shown. It is pointed out that the petitioner made a profit of Rs. 14,563 in the year 1965, Rs. 12,406 for the year 1966, Rs. 9,383 for the year 1968, Rs. 2,590 for the year 1970, Rs. 1,593 for the year 1971, and Rs. 5,835 for the year 1972. For the year 1967 the petitioner incurred a loss of Rs. 4,588 for the year 1969, Rs. 10,967 for the year 1972 Rs. 6,933 and for the year 1973 Rs. 23,868. The petitioner employs in the institution about 43 persons in all including 17 persons employed in the manufacture and sale of medicines.

6. It is contended that the finding of the Tribunal that the petitioner's establishment is an industry u/s 2(j) of the Act is against law and is based on misapplication of the principles laid down by the Supreme Court in a number of cases. It is the petitioner's case that the Tribunal has ignored that the dominant activities of the petitioner's establishment is charitable in nature and consists of conducting a hospital and nursing home, etc. It is his case that the Tribunal has not addressed himself to the question as to the dominant activities of the petitioner, and on what basis it constituted an industry under the Act. The Tribunal according to the petitioner, has been influenced by part of the activities of the petitioner which might be commercial in nature.

7. Now, the question that has to be decided in this case has come up for consideration before the Supreme Court in a number of cases. This Court has also considered the matter on the basis of the Supreme Court decisions. In *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , the Supreme Court had said that 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. The Supreme Court further observed that, 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. On the basis of this decision it was argued in the case of *University of Delhi and Another Vs. Ram Nath*, , that the concept of service which is expressly included in the definition of "industry" need not be confined to material service and ought to be held to include even educational or cultural service and in that sense educational work carried on by the University of Delhi should be held to be an industry. The Supreme Court though it observed that there is prima facie some force in the argument urged on behalf of the employees said it is necessary to enquire whether the work carried on by an educational institution can be said to be work carried on by it with the assistance of labour or co-operation of teachers. The Court then stated that 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 find its parallel in the co-operation between the educational institution and its teachers. It would no doubt sound somewhat strange, the Court observed, 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 employees contend is accepted, that consequence must follow. If the scheme of the Act and the other relevant considerations necessarily lead to the said consequence, the Court will have to accept the employees' contention notwithstanding the fact that it does not fit in with the generally accepted sense of the word "industry". Having said that the Supreme Court poses the question whether the concept of co-operation between teachers and their institution being treated as similar to the co-operation between labour and capital fit in with the scheme of the Act? After considering Sections 2(j), 2(k), 2(s) and 33C(s) the Court held 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. In coming to this conclusion stress was laid on the definition of "workman" prescribed by Section 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 u/s 2(s), and so, it follows that the whole body of employees with whose co-operation the work of imparting education is carried on by educational institutions do not fall within the purview of Section 2(s), and any disputes between them and the institutions which employed them are outside the scope of the Act. In other words if imparting education is an industry u/s 2(j), the bulk of the employees being outside the purview of the Act, the only disputes which can fall within the scope of the Act are those which arise between such institutions and their subordinate staff, the members of which may fall u/s 2(s). The Supreme Court was of opinion that having regard to the fact that the work of education is primarily and exclusively carried on with the assistance of the labour and co-operation of teachers, the omission of the whole class of teachers from the definition prescribed by Section 2(s) has an important bearing and significance in relation to the problem which the Court was considering.

8. In *University of Delhi and Another Vs. Ram Nath*, , the Supreme Court considered the *Hospital. The State of Rajasthan Vs. Rehman*, , *Lalit Hari Ayurvedic College Pharmacy, Pilibhit v. Lalit Hari Ayurvedic College Pharmacy Workers*"

Union, Pilibhit 1960-I L.L.J. 250 , and The Ahmedabad Textile Industry's Research Association Vs. The State of Bombay and Others, . In the first of these cases, viz. The State of Rajasthan Vs. Rehman, it had been expressly stated that the Court was not expressing any opinion on the question as to whether running an educational institution would be an industry. A similar statement was made in the case of 1960 1 L.L.J. 250 {Lalit Hari Ayurvedic College, case), though on the broad facts proved in that case, the activity of the Lalit Hari Ayurvedic College Pharmacy was held to be an undertaking u/s 2(j). In The Ahmedabad Textile Industry's Research Association Vs. The State of Bombay and Others, , while discussing the question as to the character of the work undertaken by the research association, the Supreme Court took the precaution of observing that the activities of the association had little in common with the activities of what may be called a purely educational institution. On the facts of the case it was held that the research association was carrying on an industry, though the Court emphasised the further fact that its work was distinct and separate from the work of an institution which carries on purely educational activities,

9. It might be noted that in the The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, , the Supreme Court, in terms had approved of the general principles enunciated in the minority judgment of Isaacs, J., in Federated State School Teachers' Association of Australia v. State of Victoria [41] C.L.R. 569. The Supreme Court placed reliance and expressed its general approval with the social philosophy to which Isaacs, J., gave expression in his dissenting judgment in dealing with the scope and effect of the definition prescribed by Section 2(j) in the Indian Act, but it took the precaution of making a specific statement that though the general views expressed by Isaacs, J., appeared to the Court to be acceptable the Court should not be understood as having concurred in his final conclusion in regard to the character of educational activities carried on by educational institutions. This observation was pointedly noted in University of Delhi's case, wherein it was stated that the observation made in the judgment leaving open that question was not a casual or an accidental observation ; it was made deliberately to avoid a possible argument in future that the said judgment impliedly accepted the conclusion of Isaacs, J., The Supreme Court in the University of Delhi's case specifically stated again that the approval given to the general views expressed by Isaacs, J., in that case does not necessarily mean that his final conclusion was accepted.

10. In the Australian case [41] C.L.R. 569, Knox, C.J., Isaacs, Gavan Duffy, Rich and Starke, JJ. Isaacs, J., dissenting had held that educational activities of the State carried on under the appropriate statutes and statutory regulations of each State relating to education did not constitute an "industry" within the meaning of Section 4 of the Commonwealth Conciliation and Arbitration Act, 1904-1928 ; that the occupation of the teachers so employed was not an "industrial" occupation, and that the dispute which existed between the States and the teachers employed by them was, therefore, not an "Industrial Dispute " within Section 51 (XXXV) of the Constitution.

11. In the minority judgment of Justice Issacs, the learned Judge points out that the question for determination in that case, viz., whether the occupation of employees engaged in education is "industrial" does not involve any abstruse doctrine of law or technical expression. It is, however, a matter of law *City of Halifax v. Estate of J.P. Fairbanks* [1928] A.C. 117 at p. 123, and depends entirely on the meaning which the members of the Court as intelligent citizens, presumably conversant with the current knowledge of the subject, attach to the everyday expression, "industrial dispute" as an integral part of the English language. In that case, according to Justice Issacs, the contention raised on behalf of the State of Victoria was based on the theory that society is industrially organised for the production and distribution of wealth in the sense of tangible, ponderable, corpuscular wealth, and, therefore, an " industrial dispute" cannot possibly occur except where there is furnished to the public -- the consumers -- by the combined efforts of employers and employed, wealth of that nature. Consequently, " education" not being "wealth" in that sense, there never can be an " industrial dispute" between employers and employed engaged in the avocation of education, regardless of the wealth derived by the employers from the joint co-operation. Justice Isaacs answers this:

The contention sounds like an echo from the darkages of industry and political economy. It not merely ignores the constant currents of life around us, which is the real danger in deciding questions of this nature, but it also forgets the memorable industrial organisation of the nations, not for the production or distribution of material wealth, but for service, national service, as the service of organised industry must always be. Examination of this contention will not only completely dissipate it, but will also serve to throw material light on the question in hand generally. The contention is radically unsound for two great reasons. It erroneously conceives the object of national industrial organisation and thereby unduly limits the meaning of the terms "production" and "wealth" when used in that connection. But it further neglects the fundamental character of "industrial disputes" as a distinct and insistent phenomenon of modern society. Such disputes are not simply a claim to share the material wealth jointly produced and capable of registration in statistics. At heart they are a struggle, constantly becoming more intense on the part of the employed ground engaged in co-operation with the employing group in rendering services to the community essential for higher general human welfare, to share in that welfare in a greater degree, (see, for instance, Lord Askwith's work on *Industrial Problems and Disputes* at p. 25). All industrial enterprises contribute more or less to the general welfare of the community, and this is a most material consideration when we come to determine the present question apart from the particular contention raised at the Bar.

In that case Justice Isaacs takes from the judgment of Starke, J., in *Insurance Staff's and Bank officials'* case (1923) 33 C.L.R. 536, the passage which states the view of R.H. Towney in these words:

It -- that is, the industrial mechanism of society -- "includes all those bodies of men associated, in various degrees of competition and co-operation, to win their living by providing the community with some service which it requires,

Justice Isaacs then proceeds :

The view so expressed is incontrovertible. The community is industrially organised for "services", which expression is the genus, and material objects are only one species of that genus. Professor Hearn recognised this truth in his *Plutology* (pp. 7-8) over sixty years ago, graphically dealing specifically with "industrial" wants and desires. In 1920 the University of Manchester published a volume entitled *Labour and Industry*, containing lectures delivered in the department of Industrial Administration in the Manchester College of Technology. In one of these Mr. Cole of the Labour Research department refers (p. 63) to the most vital factor in industrial organisation, the co-operation and willingness to work of the mass of the people who produce and distribute goods and render services (The italics are mine). Mr. Cole, it will be observed, distinguishes between "goods" and "services" following a not infrequent line of thought in other connections, but the main point is he includes "services on the same footing as "goods" in industrial organisation. In another of those lectures, the distinction disappears and the generic term is used. I refer to the lecture given by the Right Hon. Mr. Whitley, M. P., whose views naturally command attention. He speaks not of "material wealth" produced by industrial enterprise, but constantly of "services" and "counter-services."

I have rather extensively quoted from the judgment of Justice Isaacs in view of the fact that the Supreme Court has stated that the general views expressed by Justice Isaacs appeared to the Court to be acceptable.

12 In *Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal*, , the Court reviewed the earlier case on the point. The Court held that tests for determining whether a dispute is an industrial dispute or not have been enunciated and the principles established as a result of several decisions of the Supreme Court on this point. There is, therefore, no warrant to allow any other element to be added to the criteria laid down for determining what an industry is. The linch-pin of the definition of industry is to ascertain the systematic activity which the organisation is discharging, namely, whether it partakes the nature of a business or trade, or is an undertaking or manufacture or calling of employers. If it is that and there is co-operation of the employer and the employees resulting in the production of material services, it is an industry notwithstanding that its objects are charitable or that it does not make profit or even where profits are made, they are not distributed among the members. Then considering the various activities carried on systematically by the Federation of Indian Chambers of Commerce the Court said it is clear that the Federation carries on systematic-activities to assist its members and other businessmen and industrialists and even to non-members as for instance, in giving them the right to subscribe to their bulletin, in taking up

their cases and solving their business difficulties and in obtaining concessions and facilities for them from the Government, These activities are business activities and these are material services rendered to businessmen, traders and industrialists who are members of the constituents of the Federation. What are material services need not be necessarily confined to the illustrations given in the Gymkhana case. 1967 II L.L.J. 7201, which are by way of illustrations only.

13. In one of the latest decisions on the point in *The Workmen of Indian Standards Institution Vs. The Management of Indian Standards Institution*, , the Supreme Court pointed out:

To summarise an activity can be regarded as an " industry" within the meaning of Section 2(j) only if there is relationship of employer and employees and the former is engaged in "business", trade, undertaking, manufacture or calling of employers" and the latter in calling, service, employment, handicraft or industrial occupation or avocation." Though "undertaking" is a word of large import and it means anything undertaken or any project or enterprise, in the context in which it occurs, it must be read as meaning an undertaking analogous to trade or business. In order that an activity may be regarded as an undertaking analogous to trade or business, 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. And it must rest on co-operation between employer and employees who associate together with a view to production, sale or distribution of material goods or material services. It is entirely irrelevant whether or not there is profit motive or investment of capital in such activity. Even without these two features an activity can be an undertaking analogous to trade or business. It is also immaterial " that its objects are charitable or that it does not make profits or even where profits are made, they are not distributed amongst the members". *Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal*, or that its activity is subsidised by the Government. Again it is not necessary that " the employer must always be a private individual The Act, in terms, contemplates cases of industrial disputes where the Government or a local authority or a public utility service may be the employer".... *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, at p. 756 of the report *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, . It also makes no difference that the material services rendered by the undertaking are in public interest. The concept of public interest in a modern welfare State where new social values are fast emerging and old dying out, is indeed so wide and so broad and comprehensive in its spectrum and range that many activities which admittedly fall within the category of "industry" are clearly designed to subserve public interest.

14. If we examine this case on the basis of Supreme Court decisions there cannot be any difficulty in coming to the conclusion that the petitioner-institution is nothing but an industry. The Samajam Hospital grants medical aid

to the sick under the Ayurvedic system and for the purpose it has opened dispensaries, and manufactory units and distribute medicines and encourages and promote study and practice of Ayurvedic Medicines and do all such things as are necessary for the encouragement of Ayurveda. Further, it is running a hospital, and nursing home at Shoranur and there are branches and sales depots at Madras and Salem. For these purposes the Samajam admittedly engages employees to work in different departments. The establishment where the Ayurvedic medicines are manufactured, is a factory registered under the Factories Act, as pointed out in the counter-affidavit filed on behalf of the 5th respondent. For the service rendered by way of treatment fees are charged from citizens and the establishment is organised in a manner in which trade or business is undertaken.

15. In view of this, I dismiss this original petition. But I make no order as to costs in the circumstances of the case. My judgment dated 16-3-1977 stands revised as above.