
(1978) 10 KL CK 0019
In the High Court Of Kerala

K.R.B. Kaimal and Another	Vs	APPELLANT
Director of Postal Services		RESPONDENT

Date of Decision : 06-10-1978

Acts Referred:

Constitution of India, 1950 — Article 148, 309, 310, 311
Industrial Disputes Act, 1947 — Section 10, 11A, 2, 20, 22

Citation : (1979) 1 LLJ 176

Hon'ble Judges : Chandrasekhara Menon, J

Bench : Single Bench

Judgement

T.C. Menon, J.—Both these original petitions challenge an order of the Central Government, Labour Court, Quilon passed in Claim Petition Nos. 150/73 (C) to 156/73 (C) and 51/74(C). The petitioners are the respective applicants in C.P. Nos. 150/73 and 51/74 before that Court. These two petitioners along with six others had filed applications before the Labour Court u/s 33C(2) of the Industrial Disputes Act, 1947 (herein after referred to as the Act) for determination of the benefits due to the petitioners. The applications were heard together as a common question of law arose therein.

2. The applicants were postal employees-clerks, stenographers and Class IV employees. Their services were terminated by the postal authorities with effect from 25-9-1968 and 7-10-1968. The order terminating their services was challenged before this Court. This Court ordered their reinstatement holding that the termination of services illegal. They were accordingly reinstated but although they were entitled to full salary for the period they were kept out of employment, according to the applicants, the postal authorities restricted their claim to three years preceding the date of the High Court's order.

3. The postal department represented by the Director of Postal Services (South), Kerala Circle and the Post Master General, Kerala Circle took up a preliminary objection before the Labour Court contending that the petitioners were not workmen employed in an industry in as much as the postal department is not an

industry as defined in Section 2(j) of the Act and, therefore, the provisions under the Act will not be applicable to them. It was contended that the postal department is run by the Central Government in its regal or sovereign capacity or at any rate, such capacity constitutes a major element in the running of that department and, therefore, the department will be outside the scope of Section 2(j) of the Act. But according to the applicants, the postal department is run by the State not in its regal or sovereign capacity, but just like any other employer carrying on an undertaking rendering material service to the community at large. According to them, the activities of the State in connection with the running of the postal department cannot be said to be in the exercise of purely governmental functions. The Labour Court accepted the preliminary objection. The Labour Court held that the postal department is not an industry and the petitioners are not workmen as defined in Section 2(s) of the Act. In coming to this conclusion reliance was placed on the decisions in *University of Delhi and Another Vs. Ram Nath*, and *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, . In *Madras Gymkhana Club* case Justice Hidayatulla as he then was pointed out that in such cases where the question arises whether the relationship of employer and employees is not necessarily creative of an industry the cardinal test would be to find out whether there is an industry according to the denotation of the word in the first part of its definition Section 2(j). The second part will then show what will be included from the angle of employees. He pointed out that if the activity can be described as an industry with reference to the occupation of employers, the ambit of the industry under the force of the second part, takes in the different kinds of activity of the employers mentioned in the second part. In other words, before the work engaged it can be described as an industry, it must bear the definite character of trade or business or manufacture or calling or must be capable of being described as an undertaking resulting in material goods or material services. It is only when the production or distribution of material goods or material services is the result of co-operation between employers and employees in an activity which falls within the expression, trade, business, manufacture, undertaking or calling of the employer than an industrial dispute can arise. According to the learned Judge, personal service rendered by domestic and other servants, administrative service of public officials, service in aid of occupation of professional men, such as, doctors and lawyers, etc., employment of teachers and so on may result in relationship in which there are employers on the one side and the employees on the other, but they must be excluded because they do not come within the denotation of the terms "industry".

4. The Labour Court also pointed out that any activity undertaken by the State in its regal or sovereign capacity is admittedly not an industry as defined in the Act. The activities of the Government which can be properly described as regal or sovereign activities are outside the scope of Section 2(j) of the Act. With regard to the postal department, the Court said that no doubt the said department renders material service to the community at large. This factor alone cannot

invest that department with the characteristics of an industry, for departments of justice, public administration, etc., are also rendering material service to the people, but they are not industries, but activities of the State in the exercise of its regal or sovereign functions. For this proposition the Court placed reliance on the Delhi University case referred to earlier where it had been said that the work of imparting education carried on by educational institutions was not an industry within the meaning of the Act.

5. In attacking this decision of the Labour Court the counsel for the petitioners placed reliance on the recent decision of the Supreme Court in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, . It might be noted that in this case the decisions relied on by the Labour Court, namely, the *Madras Gymkhana Club* case and the *Delhi University* case had been specifically overruled along with some other decisions. What exactly would be an industry as defined in Section 2(j) had been given a wide import in that decision. It would be useful in this connection to refer to the following passage from the judgment of Justice Krishna Iyer in that case. Speaking on behalf of himself, Justice Bhagwati and Justice Desai with which view, I find, Justice Chandrachud as he then has concurred, Krishna Iyer, J. pointed out:

140. "Industry", as defined in Section 2(j) and explained in *Banerji* (supra), has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical, (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, e.g., making, on a large scale prasada or food), prima facie, there is an "industry" in that enterprise,

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

141. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to over-reach itself.

(a) "Undertaking" must suffer a contextual and associational shrinkage as explained in *Banerji* (supra) and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in *I* (supra), although not trade or business, may still be "industry" provided the nature of the activity, viz., the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of "industry" undertakings, callings and services, adventures "analogous to the

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

142. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and work men, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) professions, (ii) clubs, (iii) educational institutions, (iv) co-operatives, (v) research institutes, (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), cannot be exempted from the scope of Section 20.

(b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destorying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt not other generosity compassion, developmental passion or project.

143. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" as in the University of Delhi case (supra) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (supra) will be the true test, The whole undertaking will be "industry" although those who are not "workmen" by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by Government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

144. We overrule *Safdarjung* (supra), *Solid" tors" case* (supra), *Gymkhana* (supra), *Delhi University* (supra), *Dhanrajgirjt Hospital* (supra) and other rulings whose ratio runs counter to the principles enunciated above, and *Hospital Mazdoor Sabha* (supra) is hereby rehabilitated.

6. "Industry" has been defined in the Act in Section 2(j) to mean any business, trade, undertaking, manufacture or calling of employers and includes any callings, service, employment, handicraft, or industrial occupation or avocation of workmen. Mr. Justice Krishna Iyer also pointed out that the functional focus of this Industrial legislation and the social perspective of Part IV of the Paramount Law drive us to hold that the dual goals of the Act are contentment of workers and peace in the industry and judicial interpretation should be geared to their fulfilment, not their frustration. A worker-oriented statute must receive a construction where, conceptually, the keynote thought must be the worker and the community, as the Constitution has shown concern for them, inter alia, in Arts. 38, 39, and 43.

7. His Lordship laid stress on certain observations in the decision in *D.N. Banerji v. P.R. Mukherjee* (1950) 3 S.C.L.J. 1870 : AIR 1953 S.C. 38. In that case Justice Ghandrasekhara Aiyar pointed out thus:

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 dispute 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. (Emphasis added).

8. It will be interesting to note that in the earlier decision itself Ghandrasekhara

Aiyar, J. speaks about public utility service such as railways, telephones, etc. He stated:

A public utility service such as railways, telephones and the supply of power, light or water to the public may be carried on by private companies or business corporations. Even conservancy or sanitation may be so carried on, though after the introduction of local self-government this work has in almost every country been assigned as a duty to local bodies like our Municipalities or District Boards or Local Boards. A dispute in these services between employers and workmen is an industrial dispute, and the proviso to Section 10 lays down that where such a dispute arises and a notice u/s 22 has been given, the appropriate Government shall make a reference under the Sub-section. 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 as there generally is in a business. But neither the one nor the other seems a sine quo non or necessary element in the modern conception of industry. (Emphasis added) .

I find that the last sentence has been given special emphasis by Justice Krishna Iyer in his decision and what Justice Ghandrasekhara Aiyar has said has been completely approved by this later decision of the Supreme Court.

9. Their enumerating typical municipal activities the learned Judge observed thus:

Some of these functions may appertain to end part of the nature of an industry, while others may not. For instance, there is a necessary element of distinction between the supply of power and light to the inhabitants of a Municipality and the running of charitable hospitals and dispensaries for the aid of the poor. In ordinary parlance, the former might be regarded as an industry but not the latter. The very idea underlying the entrustment of such duties or functions to local bodies is not to take them out of the sphere of industry but to secure the substitution of public authorities in the place of private employers and to eliminate the motive of profit-making as far as possible. The levy of taxes for the maintenance of the services of sanitation and the conservancy or the supply of light and water is a method adopted and devised to make up for the absence of capital. The undertaking or the service will still remain within the ambit of what we understand by an industry though it is carried on with the aid of taxation, and no immediate material gain by way of profit is envisaged. (Emphasis added).

Krishna Iyer, J. pointed out that the contention that charitable undertakings are not industries is, by this token, untenable. Another earlier decision which has been approved more or less wholeheartedly in the later decision is the case of *The Corporation of the City of Nagpur Vs. Its Employees*, . Krishna Iyer, J. said

thus:

Justice Subba Rao, with inhibited logic, chases this thought and reaches certain tests in Nagpur Municipality, speaking for a unanimous Bench, We respectfully agree with much of his reasoning and proceed to deal with the decision. If the ruling were right, as we think it is, the riddle of "industry" is resolved in some measure. Although foreign decisions, words and phrases, lexical plenty and definitions from other legislations, were read before us to stress the necessity of direct co-operation between employer and employees in the essential product of the undertaking, of the need for the commercial motive, of service to the community, etc., as implied inarticulately in the concept of "industry", we bypass them as but marginally persuasive. The rulings of this Court, the language and scheme of the Act and the well-known canons of construction exert real pressure on our judgment. And, in this latter process, next to Banerji comes Corporation of Nagpur which spreads the canvas wide and illumines the expression "analogous to trade or business", although it comes a few days after Hospital Mazdoor Sabha decided by the same Bench .

10. Justice Subba Rao proceeded to outline the ambit of industry thus:

If the preamble is read with the historical background for the passing of the Act, it is manifest that the Act was introduced as an important step in achieving social justice. The Act seeks to ameliorate the service conditions of the workers, to provide a machinery for resolving their conflict and to encourage co-operative effort in the service of the community. The history of labour legislation both in England and India also shows that it was aimed more to ameliorate the conditions of service of the labour in organised activities than to anything else. The Act was not intended to reach the personal services which do not depend upon the employment of a Labour force.

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 optly termed "the primary and inalienable functions of a constitutional government.

In regard to the words "analogous to the carrying out of a trade or business" Justice Subba Rao observed as follows:

...the emphasis was more on "the nature of the organised activity implicit in trade or business, than to equate the other activities with trade or business.

His Lordship said that even activities of a municipality which cannot be described as trading activities can be the subject-matter of an industrial dispute. For example, with regard to the education, Justice Subba Rao observed that the education department of the Corporation of Nagpur which looks after the compulsory primary education within the limits of the Corporation, would satisfy the definition of the term "industry". This service can equally be done by private

persons. This department would satisfy the other tests.

11. The learned Judge said in his words:

(1) The definition of "industry" in the Act is very comprehensive. It is in two parts ; one part defines it from the stand-point of the employer and the other from the stand-point of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act. (2) The history of industrial disputes and the legislation recognize the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered by a corporation is service rendered by a corporation is an industry, the employees in the departments connected with that services, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharged many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purpose of the Act.

His Lordship observed that the tax department of the local body is "industry". He further says:

The scheme of the Corporation Act is that taxes and fees are collected in order to enable the municipality to discharge its statutory functions. If the functions so discharged are wholly or predominantly covered by the definition of "industry", it would be illogical to exclude the tax department from the definition. While in the case of private individuals or firms services are paid in cash or otherwise, in the case of public institutions, as the services are rendered to the public, the taxes collected from them constitute a fund for performing those services. As most of the services rendered by the municipality come under the definition of "industry", we should hold that the employees of the tax department are also entitled to the benefits under the Act.

The learned Judge said that the health department of the municipality too is an "industry". The Court said:

This department looks after scavenging, sanitation, control of epidemics, control of food adulteration and running of public dispensaries. Private institutions can also render these services. It is said that the control of food adulteration and the control of epidemics cannot be done by private individuals and institutions. We do not see why. There can be private medical units to help in the control of epidemics for remuneration. Individuals may get the food articles purchased by them examined by the medical unit and take necessary action against guilty merchants. So too, they can take advantage of such a unit to prevent epidemics

by having necessary inoculations and advice. This department also satisfies the other tests laid down by us, and is an industry within the meaning of the definition of "industry" in the Act.

His Lordship observed that even the General Administration Department is "industry", His Lordship gave reason:

Every big company with different sections will have a general administration department. If the various departments collated with the department are industries, this department would also be a part of the industry. Indeed the efficient rendering of all the services would depend upon the proper working of this department, for, otherwise there would be confusion and chaos. The State Industrial Court in this case has held that all except five of the departments of the Corporation come under the definition of "industry" and if so, it follows that this department, dealing predominantly with industrial departments, is also an industry. Hence the employees of this department are also entitled to the benefits of this Act.

12. It would be interesting to note that the majority decision in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, accepts in full the principle enunciated by Justice Isaac in Federal States School Teachers' Association of Australia V. State of Victoria [1929] 41 C.L.R. 569. What Justice Isaacs said there is as follows:

The theory was 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, say the employers, "education" not being "wealth" in that sense, there never can be an "industrial dispute" between employers and employees engaged in the avocation of education, regardless of the wealth derived by the employers from the joint co-operation.

The contention sounds like an echo from the dark ages of industry and political economy. It not merely ignores the constant currents of life around us, which is the real danger in deciding questions of this nature, but it also forgets the memorable industrial organization of the nations, not for the production or distribution of material wealth, but for services, national service as the service of organized industry must always be. Examination of this contention will not only completely dissipate it, but will also serve to throw material light on the question in hand generally. The contention is radically unsound for two great reasons. It erroneously conceives the object of national industrial organization and thereby unduly limits the meaning of the terms "production" and "wealth" when used in that connection. But it further neglects the fundamental character of "industrial disputes" as a distinct and insistent phenomenon of modern society. Such disputes are not simply a claim to share the material wealth jointly produced and

capable of registration in statistics. At heart they are a struggle, constantly becoming more intense on the part of the employed group engaged in co-operation with the employing group in rendering services to the community essential for a higher general human welfare, to share in that welfare in a greater degree.... That contention, if acceded to, would be revolutionary.... How could it reasonably be said that a comic song or a jazz performance, or the representation of a comedy, or a ride in a tramcar or motor-bus, piloting a ship, lighting a lamp or showing a moving picture is more " material" as wealth than instruction, either cultural or vocational ? Indeed, to take one instance, a workman who travels in a tramcar a mile from his home to his factory is no more efficient for his daily task than if he walked ten yards, whereas his technical training has a direct effect in increasing output. If music or acting or personal transportation is admitted to be " industrial " because each is productive of wealth to the employer as his business undertaking, then an educational establishment stands on the same footing. But if education is excluded for the reason advanced how are we to admit barbers, hair-dressers, taxi-car drivers, furniture removers, and other occupations that readily suggest themselves? And yet the doctrine would admit manufactures of intoxicants and producers of degrading literature and pictures, because these are considered to be "wealth". The doctrine would concede, for instance, that establishments for the training of performing dogs, or of monkeys simulating human behaviour, would be " industrial", because one would have increased material wealth, that is, a more valuable dog or monkey, in the sense that one could exchange it for more money. If parrots are taught to say " Pretty Polly" and to dance on their perch, that is, by concession, industrial, because it is the production of wealth. But if Australian youths are trained to read and write their language correctly and in other necessary elements of culture and vocation making them were efficient citizens, fitting them with more or less directness to take their place in the general industrial ranks of the nation and to render the services required by the community. That training is said not to be wealth and the work done by teachers employed is said not to be industrial.

So long as services are part of the wealth of a nation--and it is obscurantist to object to it--educational services are wealth, are " industrial". We agree with Isaacs, J.

* * * *

We have extensively excerpted from the vigorous dissent because the same position holds good for India which is emerging from feudal literacy to industrial education. In Gandhi's India basic education and handicraft merge and in the latter half of our century higher education involves field studies, factory training, house-surgery and clinical education; and, sans such technological training and education in humanities, industrial progress is self-condemned. If education and training are integral to industrial and agricultural activities, such services are part of industry even if high browism may be unhappy to acknowledge it. It is a class-

conscious, inegalitarian outlook with an elitist aloofness which makes some people shrink from accepting educational institutions, vocational or other, as industries. The definition is wide, embraces training for industry which, in turn, encompasses all processes of producing goods and services by employer-employee co-operation. Education is the nidus of industrialization and itself is industry.

13. Krishna Iyer, J. has pointedly stated that "I agree with Justice Isaacs".

14. The Chief Justice Mr. Beg has stated that he is in agreement with the conclusion of Justice Krishna Iyer and that he endorses his reasoning almost wholly and says as follows:

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 "sovereign" should be reserved, technically and more correctly, for the sphere of ultimate decisions. Sovereignty operates on a sovereign plane of its own as I suggested in *Keshavchandra Bharati*'s case supported by a quotation from Ernest Barker's *Social and Political Theory*. Again, the term "Regal" from which the term "sovereign" functions appears to be derived, seems to be a misfit in a Republic where the citizen shares the political sovereignty in which he has even a legal share, however small, inasmuch as he exercises his right to vote. What is meant by the use of the term "sovereign" in relation to the activities of the State, is more accurately brought out by using the term "governmental" functions although there are difficulties here also 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 Arts. 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication.

15. Justice Chandrachud as he then was, not only expressed his agreement with the views taken by Justice Krishna Iyer but would appear to have given a more wide meaning to the word "industry" as defined in the Act. His Lordship observed thus:

179. 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 beside the point to enquire whether the activity is undertaken by the State, and further, 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. If the water supply and sewerage schemes or fire fighting establishments run by a municipality can be industries, so ought to be the manufacture of coins and currency, arms and ammunition and the winning of oil and uranium. The fact that those latter kinds of activities are, or can only be, undertaken by the State does not furnish any answer to the question whether these activities are industries. When undertaken by a private individual they are industries. Therefore, when undertaken by the State, they are industries. The nature of the activity is the determining factor and that does not change according to who undertakes it. Items 8, 11, 12, 17 and 18 of the First Schedule read with Section 2(n)(vi) of the Industrial Disputes Act render support to this view. These provisions which were described in *Hospital Mazdoor Sabha* (supra) as "very significant" at least show that; conceivably, a Defence Establishment, a Mint or a Security Press can be an industry even though these activities are, ought to be and can only be undertaken by the State in the discharge of its constitutional obligations or functions. The State does not trade when it prints a currency note or strikes a coin. And yet, considering the nature of the activity, it is engaged in an industry when it does so.

16. In view of this latest decision of the Supreme Court by a Bench consisting of seven Judges I do not think that there could be any controversy now that the postal department would come within the ambit of the word "industry" as defined in the Act. In the light of the later ruling of the Supreme Court an additional counter-affidavit was filed on behalf of respondents 1 and 2 on the 29th September, 1978. It is pointed out therein that the jurisdiction conferred by Section 33C(2) of the Act can be exercised only by a Labour Court specifically authorised to do so by the appropriate Government which, on the facts and circumstances of the case, is a Central Government. It is stated that in the absence of such specification, the Labour Court had no jurisdiction to deal with the matter and therefore the dismissal of the petition filed by the petitioner before the respondent does not warrant interference by this Court. The additional counter-affidavit goes to state that the provisions of the Act are not applicable to the staff employed in the office of the Post Master General. That office is maintained by the Central Government in discharge of sovereign functions and that the said office would not satisfy the definition of industry given in Section 2(j) of the Act. It is submitted in the counter-affidavit that the clerical staff in the office of the Post Master General who are civil servants employed in the Union Government are not governed by the provisions of the Act. It is open to the Parliament to make laws which govern the relations between the Union of India

and its employees. It is further submitted that the provisions in Articles 148(5) and 309 of the Constitution and the rules framed by the President of India in exercise of the powers conferred by those provisions are special laws governing the service conditions of civil servants and that these special laws exclude the operation of the general provisions indicated in the Act, In exercise of the powers conferred by the aforesaid constitutional provisions, the President of India has framed the following rules:

- (i) The Fundamental Rules
- (ii) The Supplementary Rules
- (iii) The Central Civil Services (Classification, Control and Appeal) Rules, 1963
- (iv) The Central Civil Services (Pension) Rules, 1972
- (v) The Central Civil Services (Temporary Service) Rules, 1963
- (vi) The Central Civil Services (Conduct) Rules
- (vii) The Central Civil Services (Leave, Travel Concession) Rules
- (viii) The Central Civil Services (Central Provident Fund) Rules.

17. The additional counter-affidavit goes on to point out that these rules are statutory provisions which govern the service conditions and the relationship between the Union Government on the one hand and the civil servants on the other. As these rules occupy the field covered by the more general provisions of the Act, these special rules exclude the applicability of the general provisions contained in the Act, Therefore, according to the respondents, the civil servants governed by these rules do not come under the purview of the Act.

18. It is further submitted that any dispute or difference between employers and employees, which is connected with the employment, or non-employment or the terms of employment or with the conditions of labour will fall within the definition of an industrial dispute defined in Section 2(k). But these conditions of employment of civil servants are covered by statutory rules. The recruitment rules framed under Article 309 of the Constitution govern the recruitment of clerks in the office of the Post Master General. The condition subject to which they have to work are all covered by the statutory rules. The employment or the non-employment are covered by the statutory rules. The terms of employment are covered by the Fundamental Rules, the Pension Rules, The Leave Rule, T.A. Rules, Provident Fund Rules and the other relevant rules, orders and notifications. The civil servant may be awarded the penalties stipulated in the Classification, Control and Appeal Rules. The Rules themselves determine the authority, which is competent to inflict various types of punishments.

19. The additional counter-affidavit also states that by Rule 22 of the C.C.A. Rules appeals are provided for against any action taken by the statutory authorities and Rule 29 confers a power of review on high authorities including

the President of India and such authorities are given power to pass suitable orders depending on the facts and circumstances of the case. According to the respondents, if the contention that the Act is applicable to civil servants is accepted, the Central Government will have to make reference u/s 10 of the Act in all cases where a civil servant challenges or disputes the orders passed by the various statutory authorities. In view of Section 2A, the dismissal or retrenchment of an employee has to be treated as an industrial dispute. Thus even in a case where on review under Rule 29 of the C.C.A. Rules the President of India passes an order of dismissal of a civil servant, an industrial dispute will have to be raised and a reference u/s 10 of the Act will have to be made by the Central Government to one or the other of the authorities enumerated in that section.

20. Similarly the counter-affidavit deals with the provisions of the Classification, Control and Appeal Rules which provide for an elaborate enquiry either under Rule 14 or under Rule 16 depending on the punishment proposed to be inflicted on a Government servant. Section 11A of the Act gives the authorities constituted under the Act power to set aside an order of discharge or dismissal of an employee and to direct reinstatement with back wages.

21. In regard to Section 33C of the Act under which the applications had been filed what the respondents contend is that such a provision can have no application at all to a case where the Government itself is the employer since no question of initiation of proceedings under the Revenue Recovery Act by the Collector against the Government can conceivably arise.

22. Section 33C(2) gives a right to a workman to make an application to the appropriate Labour Court contending that he is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money. The Court is then given the power to quantify the amount and on qualification of the amount, the decision is to be forwarded to the appropriate Government. The amount found due by the Labour Court is then to be recovered as if it is an arrear of land revenue. According to the respondents, this provision is also not applicable to Government servants since it is only a provision which provides for quantification of amounts alleged to be due. It is also submitted that a provision authorising the initiation of revenue recovery proceedings by the Collector against the employer cannot reasonably be applied to cases where the employer is the Government. It is pointed out that in cases coming under Sections 33C(1) & 33C(2) of the Act recovery under the Revenue Recovery Act does not automatically follow an adjudication by the Labour Court. After the adjudication by the Labour Court the appropriate Government has again to be satisfied that the money is due and then only can steps for recovery be initiated, Where the appropriate Government itself is the employer and the Government is of the view that the amount is not due, it would be meaningless to say that the Labour Court should first consider the correctness of the stand taken by the Government and decide whether any amount is due and that then the

Government should again examine the matter and again decide whether the amounts are legally due.

23. It would appear that the contentions in the additional counter-affidavit are based on what Justice Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, to the effect that constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby. Reliance was also placed on what the Chief Justice Beg observed that 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. To my mind, there cannot be any doubt reading the decision of the Supreme Court as a whole that a public utility service like the postal, telegraph or telephone, etc., will come within the ambit of the word industry as defined in the Act. The respondents are in error in considering that the rules framed under Articles 310 and 311 could be considered to be legislative provisions in the same field removing from the scope of the Act categories which otherwise may be covered thereby. Justice Chandrasekhara Aiyer had observed in the earlier case, Banerji's case, to which view Justice Krishna Iyer speaking for the majority gives full support that a public utility service such as railways, telephones and the supply of power, light or water to the public even if it is carried on by corporations would be an industry coming within the ambit of the Act. Such activities cannot be considered to be sovereign or regal functions and solely because rules are framed under Articles 309 and 310 of the Constitution governing such employees, they will not be taken out of the scope of the Act. This is clear from certain other provisions of the Act itself.

24. Mr. Ramachandran, the learned advocate for the petitioners made a reference in this connection to Section 9A of the Act where it is stated that no employer who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, (a) without giving to the workmen likely to be affected by such changes a notice in the prescribed manner of the nature of the change proposed to be effected or (b) within 21 days of giving such notice. It is stated therein that no notice shall be required for effecting any such change in cases where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the official Gazette, apply. This would indicate that the general provisions of the Act can apply to persons governed by those rules. No doubt in regard to the discharge of sovereign functions or what the Chief Justice Beg would say "governmental functions" the Act may not apply.

25. In advancing these arguments the respondents have not taken note of the field which the Act occupies. The Industrial Disputes Act is not primarily concerned with the actual service conditions of the employees as such. The Act as its preamble says is for the purpose of making provision for the investigation and settlement of industrial dispute. It is the product of the aftermath of the industrial revolution when new ideas of social justice and fair play as between capital and Labour came into force, India emerging from feudal period suddenly to the Industrial age had to take note of the new industrial legislations in the developed countries and apply the same here with necessary modifications. Peace in industry is the principle underlying the Act and therefore in the settlement of industrial disputes the contract between the parties which in the circumstances could only mean the rules framed by the employers, the dominant partner is not the prime basis for decision. The Industrial Courts functioning under the Act are not enforcing the common law of the land or the contract between the parties but deciding questions in accordance with fair and equitable principles on the basis of the conceptions of industrial relations which the civilized world have to accept. The Industrial Court is enabled to go beyond the contract between the parties. Therefore, framing of rules by the Government for its servants functioning in a public utility service as post and telegraph, telephones or railways will not in any manner entrench on the field occupied by the Industrial Disputes Act which is a special legislation dealing with settlement of industrial disputes. We have to take into account that by the Act, means are secured by which labour practices which are regarded as unfair are frustrated and the policy of collective bargaining as a road to industrial peace is secured.

26. No doubt generally one hardly think in terms of an industry when regard be had to the Government and its servants even in non-regal spheres. But as Chandrasekhara Aiyar, J. observed a quarter of a century back the Parliament can give the words industry and industrial dispute a wide comprehensive import to meet the requirements of a rapidly progressing industrial economy as to bring about fair and satisfactory adjustment of relations between employers and workmen in a variety of fields of activity. If in any particular department, the application of the Act results in difficulties then the remedial measures will have to be taken by the Legislature and not by a Judge in deciding a case. The Judge can only look to policy matters only to the extent that the same is clearly reflected in the legislation.

27. In the view that I have taken these writ petitions will have to be allowed. I quash the order concerned marked as Ext. P1 in both the cases. I would direct the Central Government, Labour Court, Quilon to take up the matter to file afresh and dispose of the applications filed by the petitioners in accordance with law. There will be no order as to costs.