

**(1972) 07 BOM CK 0003**

**In the Bombay High Court**

**Case No : O.C.J. Miscellaneous Petition No. 763 of 1967**

The Central Bank Executor and Trustee Co. Ltd.

APPELLANT

Vs

K.R. Pawar

RESPONDENT

**Date of Decision : 31-07-1972**

**Acts Referred:**

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 10, 11, 12, 13, 14

**Citation : (1974) 76 BOMLR 69**

**Hon'ble Judges : K.K. Desai, J**

**Bench : Single Bench**

**Final Decision : Allowed**

## **Judgement**

K.K. Desai, J.—In this petition under Article 226 of the Constitution of India the petitioner company has claimed a "Writ of Prohibition against the Industrial Tribunal for preventing the Tribunal from proceeding with the adjudication of the dispute referred to the Tribunal under Order of Reference No. AJC. 25(4) 670 LAB II dated November 4, 1967 and/or from proceeding with Reference (IT) No. 390 of 1967.

2. The facts which require to be noticed are as follows:

3. By an Indenture of Settlement dated October 12, 1941 made by Bai Bhicaiji Bennet and Bai Putlibai Broacha two Immovable properties known as "Shapurji Bharucha Baug" situated at Vithalbhai Patel Road, and one Immovable property situated at Khetwadi Main Road were settled upon certain private trusts. The Deed of Trust is produced at exh. F, in the present proceedings. By another Indenture of Settlement dated November 13, 1941 Bai Bhicaiji Bennet and Bai Putlibai Broacha settled one Immovable property situated at Dadar upon certain private trusts. This Indenture of Settlement is produced in the present proceedings at exh. G. After these two trusts were administered privately for certain duration of time, in accordance with the authority given in that connection by Clause 33 in each of these two deeds of trust, the retiring trustees

of these trusts executed separate Deed of Appointment of new trustees in March 1958 and thereby appointed the petitioner company to be trustee of the above two Deed of Settlement-Trusts (hereinafter referred to as "Bhicaiji Bennet Trust No. 1" and "Bhicaiji Bennett Trust No. 2"). Since March 1958, the petitioner company, as trustee of the above two trusts, has been administering and managing the affairs of the two trusts and accordingly the Immovable properties and other assets belonging to these two trusts. Respondent No. 2 Union by its letter dated October 6, 1965 (exh. D to the petition) wrote to the petitioner company that the workmen of the petitioner company employed at Shapurji Bharucha Baug had joined respondent No. 2 Union and requested for fixing an early meeting to discuss the grievances of the workmen. By his letter dated October 19, 1965, the secretary of the petitioner company wrote to say;

We are not the owners of the building abovenamed and the persons who are employed in connection with the said building are not our employees. We are a corporation who act, inter alia, as trustees of the property in question, ...in view of our position as trustees, we feel that no useful purpose will be served by a meeting as proposed by you.

The president of respondent No. 2 Union served a Charter of Demands dated October 18, 1966 (exh. E to the petition). It was addressed to Smt. P.N. Bharucha, Trustee of B.H. Bennett Trust. The demands related to fixation of scales of pay, dearness allowance, provident fund, gratuity, leave, holidays and uniforms. The demand was made upon a statement that the employees of the B.H. Bennet Trust had become members of respondent No. 2 Union. In connection with these demands, the Assistant Commissioner of Labour, Bombay, addressed her letter dated December 16, 1966, to "Messrs Trustees of B.H. Bennet Trust" (part of exh. F to the petition). By the Notice annexed to that letter it was stated that the demands made on behalf of the above employees were proposed to be admitted in conciliation under the Industrial Disputes Act, 1947, if otherwise admissible. On behalf of respondent No. 2 Union justification (for the demands) dated January 10, 1967 was submitted to the Conciliation Officer. In connection with the matter of conciliation proceedings the justification states as follows: "" The Workmen concerned in the dispute are employees of the Bennet Trust Property of which the Central Bank Executor and Trustee Company Limited Bombay are the Trustees and Manager" and points out several facts and demands. By a letter dated January 18, 1967 the assistant secretary of the petitioner company stated as follows :

We say that all the claimants are employees engaged by us, who are the present trustees under the Indenture of Appointment of New Trustees dated 10-3-1958 and therefore their demands are outside the purview of the Industrial Disputes Act.

He also stated:

...We beg to point out that there is no legal entity as "trust" as it seems to be

the case of claimants. We also beg to point out that there is no legal entity like "Bennet Trust Property" and therefore the question of the claimants being the employees thereof does not arise.

The contention made in the matter of the demands was that there was no industry, nor were the employees workmen and the Conciliation Officer had no jurisdiction. The matter of demands was taken into conciliation and ultimately a "Failure Report" was made by the Conciliation Officer some time before November 1967 (exh. J to the petition).

4. By the impugned order of reference made under Clause (d) of Sub-section (1) of Section 10 of the Industrial Disputes Act, the Government of Maharashtra referred to the Industrial Tribunal for adjudication the dispute of the demands made by the employees (exh. K to the petition). The particulars of the disputes and demands referred are in the schedule to the above order.

5. By the notice dated November 24, 1967, the secretary of the Industrial Tribunal, Bombay, intimated to the petitioner company that the general secretary of respondent No. 2 Union had filed a Statement of Claim giving all the particulars of the demands before the Tribunal on December 8, 1967, and required the petitioner company to file its written statement and do several other things as mentioned in the notice (exh. L to the petition).

6. By a reply dated December 4, 1967 the attorneys of the petitioner company wrote to the Industrial Tribunal stating that the dispute referred to it for adjudication was not an industrial dispute and that the Tribunal had no jurisdiction to adjudicate upon the same. The petitioner company, therefore, filed the present petition and obtained Rule on December 14, 1967.

7. The main contention of the petitioner company for challenging the validity of the above order of reference and the jurisdiction of the Industrial Tribunal appears in paras. 17 and 18 of the petition and may be summarised as follows:

8. The petitioner company is the trustee of the above two trusts by reason of the two Deeds of Appointment of new Trustees dated March 8, 1958 and March 10, 1958 and as such the petitioner company is managing the estate of the above two trusts. The petitioner company "as such trustees collect the rents etc. of the said trust properties, pay thereout the expenses of collection and other outgoings and hold the balance for the benefit of the beneficiaries under the trusts." The petitioner company as trustees of the above trusts had employed one plumber, four watchmen, four sweepers and four malis for the purpose of looking after the trust properties. The petitioner company was not an industry within the meaning of Section 2(i) of the Industrial Disputes Act, 1947. These employees do their work purely in a personal or domestic matter and they were merely domestic servants. These employees were the employees of the above two trusts and their wages were paid out of the income of the respective trusts. The activity of the petitioner company was not for production of goods or for rendering of service; nor was there any co-operation between the capital and labour or between the

employer and employees in connection with the administration by the petitioner company of these two trusts. Under the circumstances, there did not exist any industrial dispute in respect whereof an Order of Reference could be made by the State Government under Clause (d) of Sub-section (1) of Section 2(i) of the Industrial Disputes Act.

9. In support of the above submissions, on behalf of the petitioner company at the hearing of this petition illustrative Statements of Account of administration of the above two trusts for the months of December 1971 and June 1972 were tendered. These accounts are exh. B collectively. The petitioner company tendered three receipt books for the periods March, April and July 1972 containing receipts given by the employees for salaries paid not only of the above two trusts, but several other trusts which were being administered by the petitioner company. The properties of the ownership of the two trusts are mentioned in the two lists which are exh. I collectively. The number of different trusts of which the petitioner company is now trustee is shown in the statement exh. D. To show the nature of the activities of the petitioner and other relevant matters the report of the Chairman of the petitioner company and the Balance Sheet and Profit and Loss Account for the year ending December 31, 1968 was tendered. These documents are at exh. B. The Memorandum and Articles of Association of the petitioner company is exh. A.

10. On behalf of the petitioner company Mr. Joshi strongly relied upon the scheme of private trust as contained in the abovesaid two deeds of trust and contended that it was clearly an accident that by reason of the execution of the two relevant Deeds of Appointment of New Trustees, the petitioner company, became the trustee of the above two trusts. By referring to the above three receipt hooks, Mr. Joshi submitted that the petitioner company was an individual trustee of different diverse trusts administering separately and differently the affairs of each different trust. He particularly relied upon the form of the receipts which were executed by the employees working at the properties of the two trusts in connection with salary and/or remuneration paid to them. The (illustrative) form of the receipt may be conveniently quoted at this stage.

No. 6243 THE CENTRAL BANK EXECUTOR AND TRUSTEE CO. LTD.

Received from the Trustees of Bhicaiji H. Bennet the sum of Rs. 50/- Rupees Fifty only being the wages for the month of Feb. 1972, for services rendered at Dadar property.

Name and designation: Kankoo Dhanji.

Date 4 Mar. 1972.

Sd. Kankoo Dhanji (one revenue stamp of ten paise and one refugee relief stamp of ten paise.)

Mr. Joshi pointed out that this illustrative receipt clearly evidenced the fact that in respect of the second trust Kankoo Dhanji mentioned in the receipt was employed

by the second trust at its Dadar property and Es. 50 were paid to him by the second trust which employed him. The argument was that in respect of both the above trusts salaries of each and all the employees were paid by each of these two different trusts and salaries were paid by the petitioner company as a trustee of these two trusts and in its individual capacity as such trustee. Mr. Joshi submitted that each and all the receipts in all the three receipt books were clear proof of this fact (on which very strong reliance was placed on behalf of the petitioner company). He relied upon the Statements of Accounts. It is difficult to incorporate these Statements in the present judgment. It is sufficient to point out that the account of the first trust is entitled "Bhicaiji H. Bennett No. I Schedule A in trust account with Central Bank Executor and Trustee Co. Ltd." The account of the second trust is entitled "Bai Bhicaiji H. Bennett III in trust a/c with Central Bank Executor & Trustee Company Limited." In these accounts there are debit entries for payment of wages of the present employees as follows:

In the account of the first trust under the date June 3, 1972, "To wages of employees for May '72 S.B. & K.P. ... 1,512.00.

Under date December 2, 1971 in the first account "To C/o wages to various employees S.B. ... 1,497.00". (I am told that "Co/o" means "cost of wages").

11. In respect of the second trust under date December 2, 1971 "To wages to employees.... Rs. 228.00." The Dadar property of this second trust was sold away and in June 1972 no one was employed to look after any property of the second trust and wages are not debited in that account.

12. Mr. Joshi emphatically submitted that these entries in the Statements of Accounts go to show that the employees concerned were employees of the two different trusts mentioned above and were not employees of the petitioner company as such. These employees were employed by the petitioner company acting in its capacity as a trustee of these two trusts and that employment had nothing to do with the petitioner company as such. He submitted that the work of administration of these two trusts was undertaken by the petitioner company upon its being appointed the sole trustee of these two trusts under the above two Deeds of Appointment of New Trustees and that the petitioner company could never be held to be "industry." This was so because the activity undertaken by the petitioner company in connection with these two trusts was merely of looking after the investments. This activity did not partake of any business or trade, nor was it an undertaking or manufacture or calling of employers. The work undertaken by the watchmen, the supervisors, malis (gardeners) and the plumber was of domestic nature. This work was far remote and had no relation with the work of management and administration that the petitioner company undertook in respect of these two trusts as trustees thereof. For the purposes of the management and administration as trustee the petitioner company did not receive any co-operation of these employees. No activities were undertaken by the petitioner company and its employees in co-operation with each other for production of any material service. The profits that the petitioner company made

had no relation of any kind with the services which these employees were rendering as sweepers, gardeners and watchmen.

13. On behalf of the respondents these submissions were denied with great emphasis. Strong reliance was placed on the following statements in the letter of the assistant secretary of the petitioner company dated January 18, 1967:

...there is no legal entity as "trust" as it seems to be the case of the claimants. We also beg to point out that there is no legal entity like "Bennet Trust Property" and therefore the question of the claimants being the employees thereof does not arise.

The main contention of the respondents was that the business of the petitioner company was to act as executors, administrators and trustees and to undertake and execute trusts of all kinds, whether private or public, and generally to carry out what was usually known as trustee and executor business. In this connection it was emphasised that for the purpose of this business the petitioner company had collected subscribed capital amounting to Rs. 10,00,000 as appears from the Balance-sheet for the year ending December 31, 1968. The petitioner company held about Rs. 30,31,414 of different trusts against which the liability of the petitioner company was Rs. 28,98,596.94. By running the business of executors and trustees, in the year ending 1 December 31, 1968 the petitioner company had made a net profit of Rs. 28,960.42, as appears from the expenditure side of the Profit and Loss Account. The above mentioned profit was made after the petitioner company had paid Rs. 1,20,000 for establishment charges to its parent company, the Central Bank of India Ltd. The submission was that the facts disclosed in the Memorandum of Association and the Balance-sheet and the above Profit and Loss Account clearly go to prove that the petitioner company was carrying on business in a large way as trustee. As appears from exh. D, the petitioner company was the trustee in respect of 1,505 trusts of moveable properties and 52 trusts of Immovable properties. The sole and main business of the petitioner company thus was to run and manage 1,557 trusts and make profits by managing and administering these trusts. The activity of the petitioner company must, therefore, be held to be trade and business and there could be no doubt that in cases in which individuals and companies make it their business to act as trustees of different diverse trusts and in such capacity manage and administer the affairs of such different trusts, the management and administration must be held to be one single business. The activity of such individuals and companies prima facie was trade and business and must be held to be as "industry" within the meaning of the Industrial Disputes Act. Reliance in this connection was placed on the fact disclosed in the Profit and Loss Account that the main source of income of the petitioner company and its earning from these sources was as follows:

|                            |               |                    |               |
|----------------------------|---------------|--------------------|---------------|
| Acceptance fees .. .. .    | Rs. 2,275.00  | Commission .. .. . | Rs. 50,618.55 |
| Collection charges .. .. . | Rs. 56,273.49 |                    |               |

The submission was that for earning income from the above three sources the petitioner company was running business of acting as trustees, thereby meaning managing and administering different trusts. The submission was that this business must be considered as a single business. This earning was the result of combined activities of the petitioner company in carrying on business of trustees in connection with different employees employed to look after Immovable properties belonging to different 52 trusts which the petitioner company was administering. It would not be correct to consider each individual trust separately and to come to the conclusion that the employees were of these individual trusts. The more appropriate method would be to consider employment of employees for looking after these different trusts as a single employment of the petitioner company. The activity of the petitioner company in making profits by acting as trustees of the different trusts was not casual, but systematic and regular. This activity was indivisible. According to Mr. Dudhia, for the above reasons the observations in the case of *The Bombay Panjrapole, Bhuleshwar Vs. The Workmen and Another*, were applicable in all respects. He also submitted that the observations in the case of *Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal*, were applicable and should be followed.

14. Mr. Sanghvi for the State Government further submitted that the above two trusts could not be held to be separate legal entities. The ownership of the properties of these two trusts, was vested in one single entity, namely, the petitioner company. The employer was therefore admittedly one and single, the petitioner company. The trust as such did not employ anyone, as the trusts were not legal entities. He submitted that it was inconceivable that trusts which were not legal entities could make contracts of employment. The fact that the petitioner company was administering different trusts could not justify a finding that it was not one single employer in respect of employees who worked in respect of the properties belonging to different trusts which were all being administered by the petitioner company. He posed two questions as follows:

1. By whom employed? and
2. Employed for what purpose?

His submission was that the answers to the questions were simple, namely, (1) employed by the petitioner company and (2) for the purpose of carrying on business of trustees and executors and making profits. He, therefore, submitted that because some employees of the petitioner company were allotted work in respect of one trust and some others in respect of another trust and some in respect of other properties of other trusts should not make any difference in the present case. In his view these employees were transferable by the petitioner company for working for properties belonging to other diverse and different trusts as may be convenient to the petitioner company. In his view, the statements of accounts disclosed only the method of accounting adopted by the petitioner company for the purpose of accounts in respect of each trust.

15. On the basis of the above contentions both Mr. Dudhia and Mr. Sanghvi submitted that the submission made by Mr. Joshi that the employees for whom the above reference was made were not direct employees of the petitioner company and were employees of the two different trusts and were employed by the petitioner company only as a trustee of the two different trusts should be negated. The result should be that the petitioner company must be held to be carrying on trade and business and the demands referred to the Industrial Tribunal should be held to be "industrial disputes" within the jurisdiction of the Industrial Court. In connection with these contentions the following facts require to be noticed.

16. Admittedly the provisions in the Indian Trusts Act govern and are applicable to the above two trusts. In other words, the provisions of Sections 11 to 30 in the Act apply in connection with the duties and liabilities of the petitioner company as trustee. The provisions in Sections 31 to 45 apply in connection with the rights and powers of the petitioner company as a trustee. The provisions in Sections 55 to 69 apply in connection with the rights and liabilities of the beneficiaries of the trusts and the matters relating to vacation of the office of the trustee are governed by the provisions in Chapters V and VII of the Act. Both the trusts are private trusts and the main function and the obligation created against the petitioner company as a trustee under these two Deeds of Trust, as can be ascertained from Clauses 5, 6, 7, 8 and 9 of the Deeds of Trust, are inter alia, as follows:

17. To manage the trust fund and to collect and recover income, interest, dividends, rents and profits thereof and to pay thereout the expenses of collection and other outgoings, including insurance premia and expenses of painting<sup>1</sup> and white-washing the buildings and effecting- ordinary repairs and to set out from the rents and profits depreciation fund which it thought fit and to pay the balance of the net income and profits in the manner mentioned in the two Deeds of Trust during the life time of certain persons as mentioned therein and this is the total activity which the trustees of the trust, including the petitioner company, were obliged to undertake as trustees. The result of the above finding is that the activity of the trustee of these trusts was in substance to preserve the trust funds and/or investments thereof in the best manner possible and, after discharging the outgoings, to distribute the income thereof amongst the beneficiaries. It is in connection with the obligation to preserve the trust funds and the investments thereof and to earn rents from the Immovable properties that the workmen who are represented by respondent No. 2 Union were employed. Having regard to the representative Statements of Accounts of the trust as disclosed in exhs. E and E-1 collectively, the salary and remuneration of these employees was paid from the income and rents derived from the Immovable properties. Having regard to these representative Statements of Accounts and the receipts passed by these employees in the months of February, March and June 1972 as appearing in exh. C collectively, it has been proved on behalf of the petitioner company beyond any doubt that these employees were

not general employees of the petitioner company as has been argued on behalf of respondent No. 2 Union, but employees of the above two trusts. These employees had no relation of any kind with the petitioner company except as a trustee of the present two trusts. The nature of work undertaken by these employees appears from their description. These employees were watchmen, sweepers, malis, rent collectors and a plumber, The question "whether the petitioner company was in connection with the employment of these employees carrying on any trade, business or industry and whether these employees were "workmen" within the meaning of the Industrial Disputes Act" is liable to be decided in accordance with the observations of the Supreme Court in the case of The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others, as explained in the case of The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi, the effect of the observations in which case is discussed by the Supreme Court in the case of Bombay Panjrapole v. Workmen, and of F., I.C., Commerce v. R.K. Mittal. It is not possible in this case to indulge into the luxury of pointing out diverse facts involved in all these cases. It is sufficient to refer to the following contents of the above cases.

18. In the case of S.J. Hospital, New Delhi in paras. 7 and 8 of its judgment the Supreme Court referred to its previous decision in the cases of Secretary, Madras Gymkhana Club Employees" Union Vs. Management of the Gymkhana Club, and Hospital Mazdoor Sabha. In para. 9 it referred to the definitions of the phrases "industry" and "industrial dispute." In para. 11 the observation was (p. 1411) :

...The definition read as a whole denotes a collective enterprise in which employers and employees are associated.... It exists only when there is a relationship between employers and employees, the former engaged in business, trade, undertaking, manufacture or calling of employers and the latter engaged in any calling, service, employment, handicraft or industrial occupation or avocation. There must, therefore, be an enterprise in which the employers follow their avocation as detailed in the definition and employ workmen who follow one of the avocations detailed for workmen.

In para. 12 the domestic employment was expressly referred to as excluded from "industrial employment." In para. 13th observations made in the Madras Gym, Club Employees" Union case as quoted below were approved of (p. 562) :

...Primarily, therefore, industrial disputes occur when the operation undertaken rests upon co-operation between employers and employees with a view to production and distribution of material goods, in other words, wealth, but they may arise also in cases where the co-operation is to produce material services.

The phrase "material services" was explained in para. 16 to mean

...Material services involve an activity carried on through co-operation between employers and employees to provide the community with the use of something such as electric power, water,.... In providing these services there may be employment of trained men and even, professional men, but the emphasis is not

on what these men do but upon the productivity of a service organised as an industry and commercially valuable. (p. 1413).

19. The above observations were discussed in the case of F., I.C, Commerce v. R.K. Mittal in para. 26 of the judgment and the finding made in para. 27 as regards the true effect of the above observations was as follows (p. 777) :

...In our view the linchpin 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 employee 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.

20. The question is how the above observations are applicable to the activity of the petitioner company in relation to the above two trusts and the services which are rendered by the present concerned employees of the above two trusts as employees of the two trusts.

21. I have not the slightest doubt that the activity of earning dividends and/or interest and/or rent income out of investments already made could never be held to be avocation of an industrial employer. The total work involved in such an activity will only be physical preservation of investments and expert and/or professional use of intellect applied for earning the best interest, dividends and income and the normal management of investments. For that purpose the employer would never need any assistance of any kind from the employees who undertake the work of the kind undertaken by the present concerned employees. The work undertaken by the petitioner company could, therefore, never be described as avocation of an industrial employer. Correspondingly the services being rendered by the present concerned employees as watchmen, sweepers, rent collectors and plumbers and malis has no relation whatsoever with the main work and efforts to be made by the trustees for their avocation and calling of earning interest, dividends and/or any other like income from the investments of the trust funds and properties. The services rendered by these concerned employees are not productive and are of no use to the community at large. These services could never be held to be material services as explained by the Supreme Court. Applying the tests laid down by the Supreme Court in the above main authorities which were cited at the Bar, I find it impossible to accept Mr. Dudhia's contention that the present concerned employees were industrial employees and the demands raised by them arise out of an industrial dispute as defined in the Industrial Disputes Act.

22. Now it is true that the main business of the petitioner company is to act as professional trustees in respect of both private and public trusts and to make income and gain out of the activity undertaken as professional trustees. It is also true that having regard to this main purpose with which the petitioner company

has been functioning, it is today acting as a trustee of 1,505 trusts of moveable properties and 52 trusts of Immovable properties. It is also true that by reason of this professional activity undertaken by it, the petitioner company makes large profits year by year and as appears from the Profit and Loss Account for the year ended December 31, 1968, in connection "with this activity the petitioner company expended an aggregate sum of Rs. 1,87, 677.31 and even so, in that year made profits of Rs. 28,960.42. A part of these activities relates to the subscribed share capital of Rs. 20,00,000 and may not relate to the profits made merely by undertaking and executing the business of being trustees of diverse trusts. It must be remembered that in connection with the larger activities undertaken by the petitioner company in the matter of its above business the petitioner company must have itself employed a large contingent of workmen. Mr. Dudhia has, therefore, submitted that the petitioner company must be held to be trading in a large way as an industrial employer as discussed by the Supreme Court. Both Mr. Dudhia and Mr. Sanghvi, therefore, submitted that the employment of the present concerned employees by the petitioner company could not be separated from the employment of all other workmen, employed by the petitioner company generally to carry on its business of acting as professional trustees. The submission was that the character of activities of the petitioner company generally to make profits out of the above business should never be lost sight of and decide the issue that has arisen. It was wrong in this connection to draw attention to the facts of these two particular trusts and decide the issue on the basis of the concerned employees being employees only of the above two trusts. The business undertaken by the petitioner company was not casual but was systematic and regular. The result was that applying the tests laid down by the Supreme Court this issue should be answered in favour of respondent No. 2 Union.

23. It must be recorded that on the facts on which reliance is placed on behalf of the respondents there could hardly be any dispute. Having regard to the law of trust as contained in the Indian Trusts Act and the object and purpose of the above two trusts as discussed above, and the fact that the concerned employees were, in fact, employed by these two trusts, (though through the petitioner company), I am unable to accept the submissions made on behalf of the respondents. In making the above finding, I have not lost sight of the fact that, as held in the case of *Bombay Panjrapole v. Workmen*, even the trustees of a public charitable trust can carry on business and trade for profits and can be held to be industrial employers and the demands made by workmen of such trustees can be within the jurisdiction of the Industrial Tribunal for adjudication of disputes or demands made by the workmen. In fact, the petitioner company could be administering some trusts made for carrying on of an industry or trade for earning income for distribution amongst the beneficiaries. It appears to me that so far as the present employees are concerned, the question raised was always liable to be decided by looking at the provisions contained in the present two Deeds of Trust, and the work and activity undertaken by the petitioner

company as a trustee appointed for administration of these two trusts. The activity of the petitioner company generally and as regards the other trusts is entirely irrelevant for deciding the issue raised in the present case.

24. In connection with the above finding, it is necessary to notice the contents of the Order of Reference dated November 4, 1967. The first recital in the Order of Reference records the opinion of the State Government that an industrial dispute connected with the matters specified in the Schedule appended to the order existed between the Central Bank Executor and Trustee Company Ltd. and the workmen employed under it. This opinion induced the Government to make the Order of Reference under Sub-section (1) of Section 2(i) of the Industrial Disputes Act. The matters of demands mentioned in the Schedule relate to the fixation of scales of pay of rent collectors, plumbers, pumpmen, malis and sweepers. The other demands relate to dearness allowance, provident fund, gratuity, nature of leave, holidays and uniforms to all the categories of employees. It requires to be recorded that if the purpose of reference to the Tribunal was not merely to adjudicate upon the above demands made on behalf of the employees of the present two trusts, my findings could have been different. It requires to be recorded that the Charter of Demands which led ultimately to the above Order of Reference, was made by respondent No. 2 Union on behalf of the employees of the above two trusts only. The Order of Reference was made as if there was a Charter of Demands by the workmen of the petitioner company generally working as direct employees of the petitioner company in respect of its larger business, because certain questions were raised in that connection by the letter of the assistant secretary of the petitioner company dated January 18, 1967. Though in that letter it was recorded that the employees who had made demands were engaged by the petitioner company as trustees appointed under the Indenture of Appointment of New Trustees dated March 10, 1958, it was also pointed out "... there is no legal entity as "trust" as it seems to be the ease of claimants. We also beg to point out that there is no legal entity like " Bennett Trust Property" and therefore the question of the claimants being the employees thereof does not arise." There is no dispute that, having regard to the Charter of Demands having been made only on behalf of the employees of the above two trusts, the Conciliation Officer dealt with respondent No. 2 Union on the footing that the demands were made only on behalf of these employees. In fact, subsequent to the Order of Reference, a Statement of Claim was filed by respondent No. 2 Union before the Industrial Tribunal. A copy of that Statement of Claim is annexed as Annexure No. 3 to the affidavit of V.H. Joshi in reply dated February 19, 1968. In para. 1 of that Statement of Claim the general activities of the petitioner company, the large profits that it was making and the fact that it was employing about 175 workers were mentioned. The next sentence runs as follows: "The present dispute is confined to about twenty workmen who are employed by the Central Bank Executor and Trustee Company Limited, Bombay, to look after and manage the properties of B.H. Bennett Trust." The demands made on behalf of these

workmen are elaborated in the following paragraphs of the Statement of Claim. Having regard to the above position, I have thought it fit to decide the present petition on the footing that the Charter of Demands, which was being adjudicated upon under the above Order of Reference, was made by and for and on behalf of the twenty workmen which were employed by the petitioner company to look after and manage the properties, of these B.H. Bennett Trusts (the above two trusts). It is true that the language of the Order of Reference does not justify my proceeding in the above matter. Even so, having regard to the above admitted position and the arguments advanced at the hearing, I have come to the conclusion that the Order of Reference is meant only for referring the demands made by the employees of the above two trusts and not for any other general purpose. The Order of Reference has no bearing and no relation with any demands that could have been made by the general employees of the petitioner company in its large business of acting as professional trustees.

25. Under the circumstances, it is held that the demands made by the workmen of the above two trusts were not an "industrial dispute" referable for adjudication to the Industrial Tribunal under cl. (d) of Sub-section (1) of Section 2(i) of the Industrial Disputes Act. The opinion formed by the State Government in that connection was contrary to the provisions of the Act. The Order of Reference is accordingly ultra vires the powers of the Government. The Order of Reference is illegal. The Industrial Tribunal has no jurisdiction to try the above demands under the above Order of Reference.

26. In the result, the rule is made absolute in terms of prayer (a); as the employees concerned are small workmen with small salaries, there will be no order as to costs.