
(1977) 07 AP CK 0013
In the Andhra Pradesh High Court

Tirumala Tirupati Devasthanam

APPELLANT

Vs

Commissioner of Labour

RESPONDENT

Date of Decision : 26-07-1977

Acts Referred:

Constitution of India, 1950 — Article 133, 226, 233

Industrial Disputes Act, 1947 — Section 10, 2

Trade Unions Act, 1926 — Section 10, 11, 2, 22, 8

Citation : (1979) 1 LLJ 448

Hon'ble Judges : Madhava Rao, J; Alladi Kuppaswami, J

Bench : Division Bench

Judgement

Alladi Kuppaswami, J.—The Tirumala Tirupati Devasthanam is the petitioner in each of these writ petitions (hereinafter referred to in this judgment as the Devasthanam). In these petitions the Devasthanam prayed for the issue of a writ of mandamus or any other writ or direction under Article 226 of the Constitution directing the 1st respondent and the 2nd respondent, viz., The Commissioner of Labour, Andhra Pradesh and the Registrar of Trade Unions, Andhra Pradesh, not to enforce the provisions of Trade Unions Act in respect of the 3rd respondent-union and to cancel the registration of the union under the Indian Trade Unions Act. In Writ Petition No. 840 of 1976 the 3rd respondent is the Tirumala Tirupati Devasthanam Water Supply and Power Workers Union and the 3rd respondent in Writ Petition No. 1866 of 1976 is the Tirumala Tirupati Devasthanam Employees Union. The Water Supply and Power Workers Union consists of the employees in the Water Supply and Electricity Department of the Devasthanam whereas the members of the Employees Union are all employees irrespective of the Department in which they are working. It is, however, stated that these employees are exclusive of Pujaris and other Archakas who are engaged in the temple proper.

2. The employees of the Water Supply and Power Distribution Department of the Devasthanam are about 200 in number. They formed themselves into a union and applied for the union being registered under the Trade Unions Act. The

Registrar having been satisfied that all the formalities required under the Act have been complied with the registered union and issued a Registration Certificate, on the 10th July, 1970 the General Secretary of the union wrote to the Executive Officer of the Devasthanam that the Departments had formed themselves into a union and the union registered under the Trade Unions Act on 23rd May, 1970. He requested that the union may be recognised at an early date. A reminder was again sent on 11th March, 1971 and 21st June, 1971. The Devasthanam took up the stand that registration was not justified as the employees working in the Devasthanam which is a religious and charitable Institution cannot be treated as workmen within the meaning of the Trade Unions Act. The workers were attached by the departments which were only ancillary to the main institution and hence the registration of the union was not proper. They, therefore, approached the Registrar of Trade Unions to cancel the registration of the union. It is not necessary to set out the protracted correspondence between the Devasthanam and the Registrar of Trade Unions as also the Government in this regard. Finally an application was made u/s 10 of the Trade Unions Act for cancellation of the registration on the ground that the certificate had been issued by mistake. This application was rejected by order dated 2nd June, 1975, stating that it was not possible to cancel the registration on the plea of mistake by the union under the provisions of the Trade Unions Act. A similar application was made with reference to the Employees Union and a similar order was passed in that case also. Thereupon the petitioner-Devasthanam filed Writ Petition No. 840 of 1976 on 27th February, 1976 and Writ Petition No. 1866 of 1976 on 10th June, 1976 for the reliefs set out in the commencement of this judgment.

3. The case of the petitioner-Devasthanam is that it is a Public Religious Institution administered under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act XVII of 1966. The petitioner is a religious institution intended to propagate the religious tenets of Hindu Dharma Sastras and to enable the pilgrims to worship at the various temples. The Devasthanam is not an industry nor is it carrying of a trade or business. The employees of the Devasthanam are not, therefore, workmen within the meaning of the Trade Unions Act and any union of such employees is not a Trade Union within the meaning of the Act and cannot be registered as such. It is further contended that the conditions of service of the employees of the Devasthanam are governed by the Statutory Rules framed by the Devasthanam with the approval of the State Government. The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act is a self-contained Act and the Trade Unions Act has no application to employees of Religious and Charitable Institutions including the petitioner-Devasthanam which are governed by the Special Act, viz., the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act. The two trade unions concerned on the other hand, contended that the Trade Unions Act is applicable to employees of the Devasthanam and they are workmen within the meaning of the Trade Unions Act. The Devasthanam is not only a religious institution, but is also carrying on trade,

business or industry within the meaning of the Act as interpreted by various decisions of the Supreme Court and the High Courts. At any rate even assuming that the Devasthanam is a religious institution generally, in so far as the particular establishments in which the employees who registered themselves as a union under the Trade Unions Act are working is concerned, they should be considered as an industry within the meaning of the Trade Unions Act, and it is immaterial whether the Devasthanam is generally to be regarded as a religious institution. It is further contended that the petitioners has no locus standi to file the writ petition as it is not in any way aggrieved by the decision of the Registrar to register the union under the Trade Unions Act. A further contention is raised that the certificate of registration can be questioned only on the grounds mentioned in Section 10 of the Trade Unions Act and a cancellation of registration can be effected on the application only by the trade union and not at the instance of the petitioner. Lastly, it is contended that the writ petition is not maintainable as the petitioner has other adequate remedies. The petition is also liable to be dismissed on the ground of laches as it has been filed nearly 7 years after the date of the registration of the union.

4. It is convenient to consider the objections which are in the nature of preliminary objections in the first instance.

1. *Locus standi*. It is argued by Sri Koteswara Rao, learned Counsel for the 3rd respondent, that the petitioner has no locus standi to question the order of the Registrar registering the union as a trade union under the Trade Unions Act, as the petitioner is not in any way affected by such registration and is not aggrieved by the order of the Registrar. We are not inclined to agree with this submission. The petitioner is the employer of the employees who have formed themselves into a union and got it registered under the Trade Unions Act. The very object of such registration is to enable them to deal as a body with the employer. By registering themselves as a trade union they get several benefits and advantages vis-a-vis the employer. It is seen from the records that immediately after the registration was granted, the union wrote to the petitioner for recognition of the union and sent several reminders. At a particular stage the Commission of Labour also wrote to the petitioner stating that the petitioner should accord recognition to the union without any further delay under intimation to the office. It may also be noted that by registering the union there is an implied decision by the Registrar that the employer is carrying on a trade or business or an industry and the employees are, therefore, workmen under the Act. Such a decision is one which is definitely against the interest of the petitioner whose contention is that it is not carrying on a trade, business or industry. In *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, , it was held that though ordinarily the petitioner who seeks to file an application under Article 226 of the Constitution is one who has a personal or individual right in the subject-matter of the petition, the personal right need not be in respect of a proprietary interest. The person, who has been prejudiced by an act or omission of an authority may challenge it even though he has no proprietary or even fiduciary interest in the

subject-matter thereof. In *Ragina v. Liverpool Corporation Exparte Liverpool Taxi Fleet Operators" Association* 1972 2 Q.B. 299, it was held that a "person aggrieved" included any person whose interests may be prejudicially affected by what is taking place. It does not include a mere busy body who is interfering in things which do not concern him.; but it included any person who has a genuine grievance because something has been done or may be done which effects him. The learned Counsel for the 3rd respondent relied upon the decision in *Kesoram Rayon Workmen"s Union Vs. Registrar of Trade Unions and Others*, , where it was held that a rival trade union has no sufficient interest in the matter of registration of another union and could not be said to have been prejudiced in any way except by way of the introduction of a competitor. It is not a prejudice which the law can take cognisance of. In our view the position of an employer who objects to the registration of a trade union with whom it has thereafter to deal with cannot be equated to the position of a rival trade union. The learned Counsel also draw our attention to the recent decision of the Supreme Court in *Mani Subrat Jain and Others Vs. State of Haryana and Others*, , where it was held that there must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can be said to be aggrieved only when a person is denied a legal duty to do something or to abstain from doing something. In that case the appellants asked for a writ of mandamus directing the State of Haryana to appoint them to the posts of Additional District and Sessions Judge. The High Court had recommended their names for appointment under Article 233 of the Constitution, but the recommendation was not accepted by the Government. The Supreme Court held that the appointment of the District Judge is the exclusive jurisdiction of the Government after consultation with the High Court and the Governor is not obliged to accept the recommendation. In those circumstances it was held that there was no judicially enforceable right in the petitioners for being appointed as District Judges and as they were not denied the legal right they could not be said to be aggrieved. We do not consider that this decision has any application to the facts of the present case. It is true that the petitioner has prayed for the issue of a writ of mandamus directing the Registrar of Trade Unions not to enforce the provisions of the Trade Unions Act in respect of the 3rd respondent. But there is also a prayer for cancelling the registration under the Trade Unions Act. In effect the petition is one both for a writ of mandamus as well as a writ of certiorari or a writ in the nature of such a writ questioning the order of the Registrar (as strictly certiorari may not be the proper writ as the impugned order is not a judicial or quasi-judicial order). It is, however, well-established that the powers of the High Court are not confined to issuing writs which strictly come within the categories mentioned in Article 226 of the Constitution (which are merely illustrative) having regard to the wide expression "direction or order". It is now well-settled that the High Court in exercise of its powers under Article 226 can issue any order or direction setting aside an illegal order made by any authority whether it is administrative, judicial or quasi-judicial. It cannot be said that the petitioner has no locus standi to question the order of registration of the union by the

Registrar when according to it such an order is contrary to the provisions of the Trade Unions Act. We, therefore, reject the contention that the petitioner has no locus standi to file the writ petition.

2. Other adequate remedies available.--Another contention that is raised is that the writ petition should not be entertained as the petitioner has other adequate remedies.

5. u/s 10 of the Trade Unions Act the remedy given against an order of registration is by way of an application for cancellation of registration. Such a cancellation may be made on the application of the trade union or if the Registrar is satisfied that the certificate has been obtained by fraud or mistake and hence he refused to cancel the registration. An appeal is provided u/s 11 only against an order of refusal of the Registrar to register a trade union. In this case there is no order of refusal to register a trade union and hence the remedy by way of appeal is not open to the petitioner. Sri Koteswara Rao, however, argued that the question whether the union can be registered under the Trade Unions Act or not can be raised by way of an industrial dispute and Government may be asked to make a reference u/s 10 of the Industrial Disputes Act. He relied upon the decision of the Full Bench of this Court in *The Government of India and Others Vs. The National Tobacco Co. of India Ltd., Calcutta*, where it was held that a writ petition under Article. 226 will not lie if there is an appropriate remedy by way of reference under the Industrial Disputes Act. We are, however, unable to see how the petitioner can avail itself of the remedy by way of reference under the Industrial Disputes Act. Such a remedy presupposes that the petitioner is an industry or an undertaking within the Section 2(j) of the Act and the employees are workmen within meaning of that Act. Though the order of Registration is one made under the Trade Unions Act, it has been held and from the discussion in the judgment which follows it would also be clear that the criteria for the petitioner being an industry or undertaking within the meaning of the Industrial Disputes Act as well as under the Trade Unions Act are practically the same. In other words, without conceding the position that the petitioner is a trade, business or industry within the meaning of the Trade Union Act and the registration was, therefore, proper, it is not possible for the petitioner to ask for a reference under the Industrial Disputes Act. The remedy suggested, which would involve the petitioner accepting the decision which it is challenging cannot in our view be considered to be a remedy at all, much less an adequate remedy. There is, therefore, no substance in the contention that the petitioner could have asked for a reference under the Industrial Disputes Act and in view of that remedy it is not permissible to entertain the writ petition under Article 226.

3. Laches : The learned Counsel for the respondent also urged the petition should be dismissed on the ground of laches. It is true that the order registering the union was made as early as 1970, but the petitioner was not a party to those proceedings. The petitioner was no doubt made aware of the order immediately thereafter and they were asked to recognise the union, but the petitioner

objected to the registration of the union and carried on correspondence with the Government and the Registrar of Trade Unions. Finally when their contention was not accepted, they had to file a petition for cancellation of registration and when that application was rejected, the petitioner filed the writ petitions in February and June, 1976 respectively. It was only when the Commissioner of Labour by his order dated 10th June, 1975 directed the petitioner to recognise the union that it had to take serious notice of the registration of the trade union. It cannot be said, therefore, that there was such laches on the part of the petitioner as to disentitle them to the relief under Article 226 of the Constitution.

4. Certificate of registration conclusive : Lastly it is contended that the certificate of registration is conclusive and cannot be questioned. Reference was made to similar provisions in the Companies Act regarding the certificate of incorporation and there is a decision of this Court in T.V. Krishna Vs. Andhra Prabha (Private) Ltd. and Another, , to the effect that such a certificate of incorporation cannot be questioned under Article 226 of the Constitution. We do not see any analogy between a certificate of incorporation of a company under the Companies Act and a certificate of registration of a trade union under the Trade Unions Act. As we have already observed the petitioner, who has to carry on relationship with the employees, is affected by the order of registration as a trade union and further such an order would have the effect of the petitioner being treated as trade, industry or business by the authorities concerned. It is not necessary to quote authority for the proposition that even if a statute states that an order made under the statute is conclusive and even if it provides that it cannot be questioned in a Court of law, such a provision does not take away the right of this High Court under Article 226 of the Constitution to set aside any such order or certificate issued. The finality is only for the purposes of the Act and cannot in any way affect the power of the High Court conferred on it under the Constitution as the provisions of any statute are always subject to the jurisdiction of the Constitution.

6, We, therefore, see no force in any of the preliminary objections that have been raised against the maintainability of the writ petition and we now proceed to consider the merits of the case,

7. Section 2(h) of the Trade Unions Act defines "trade union" as follows:

"Trade union" means any combination whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employees and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions.

It is clear from this definition that the combination is formed for regulating relations between workmen and employers or between workmen and workmen or between employers and employers. In the recent case the combination which has been registered as a trade union is one of workmen. In order to understand

the meaning of workmen, we have to turn to Section 2(g) of the Trade Unions Act, which defines the trade dispute as:

"trade dispute" means any dispute between employers and workmen or between workmen and workmen?.

In the same sub-section it is stated that workmen means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises. Though from the fact the definition of "workmen" appears as part of the definition of "trade dispute", u/s 2(g) it would indicate that the definition is only for the purposes of that sub-section, in the absence of any other definition of the expression "workmen" it would be reasonable to adopt this definition even where that expression occurs in other parts of the Act. Reading these two subsections together, it is clear that in order that a combination of workmen should be a trade union, such workmen must be persons employed in a trade or industry. The question, therefore ultimately resolves itself into considering whether the Tirumala Tirupathi Devasthanam in which the workmen are employed is a trade or industry. The institution in which the workmen have been employed should be in the nature of industry is also clear from Section 22 of the Trade Unions Act which says that not less than one-half of the total number of the office bearers of every registered trade union shall be persons actually engaged or employed in an industry with which the trade union is connected.

8. The expression "trade or industry" is not defined in the Trade Unions Act. But the meaning of the expression "industry" as used in the Industrial Disputes Act has been the subject-matter of consideration by the Supreme Court in a number of cases. In that Act "industry" is defined as meaning any business, trade undertaking, manufacture, or calling of employers and includes any calling, service, employment, handicrafts, or industrial occupation or avocation of workmen. (Vide Section 2(j) of the Act). In the absence of any definition of "industry" in the Trade Unions Act, it appears to us that the same considerations which have been held to be relevant for the purpose of holding whether an institution is an industry or not under the Industrial Disputes Act, would be equally relevant for the purposes of the Trade Unions Act. It is therefore useful to refer briefly to the decisions of the Supreme Court considering the expression "industry" used in the Industrial Disputes Act.

9. In *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , the Supreme Court held that a hospital run by the Government is an "industry" within the meaning of the Industrial Disputes Act. While holding that 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 Industrial Disputes Act, it was held that the activities undertaken by the Government in the interests of socio-economic progress of the country as beneficial measures are not exempted from the operation of the Act. It was pointed out that in construing the wide words used in Section 2(j) it would be erroneous to attach undue

importance to attributes associated with business or trade in the popular mind in days gone by.

10. In *The Corporation of the City of Nagpur Vs. Its Employees*, the Supreme Court pointed out that the definition of the "industry" in the Act is very comprehensive. 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. But such regal functions shall have no legislative power, administration of law and judicial power. It was held that if a department of municipality discharges many functions, some pertaining to industry as defined in the Act and others non-industrial activities, the predominant function of the department shall be the criterion for the purposes of the Act. The Supreme Court considered each department of the corporation separately and held that the number of departments of the corporation constitutes an "industry" within the meaning of the Industrial Disputes Act.

11. In *The Ahmedabad Textile Industry's Research Association Vs. The State of Bombay and Others*, , it was held that the Ahmedabad Textile Industry's Research Association carried on an activity which clearly comes within the definition of the word "industry". It was observed that it is difficult to state definitely or exhaustively the attributes which would make an activity an undertaking . u/s 2(j) on the ground that it is analogous to trade or business. It can be said, as a working principle, the manner in which the activity in question is organised or arranged, the condition of the co-operation between the employer and employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2(j) of the Industrial Disputes Act applies. It was held that the Research Association would not be regarded as a purely educational institution.

12. On the other hand in *The National Union of Commercial Employees and Another Vs. M.R. Meher*, Industrial Tribunal, Bombay and Others, , it was held that a solicitor's firm does not satisfy the test of industry, though it may be organised in the same manner as an industrial concern. The service rendered by the solicitor depends upon the professional equipment, knowledge and efficiency of the solicitor concerned. A legal profession like that of a solicitor could not have been intended by the Legislature to fall within the definition of industry.

13. In *University of Delhi and Another Vs. Ram Nath*, , the question for consideration was whether the Delhi University is an industry within the meaning of the Industrial Disputes Act. It was held that the work of imparting education is not an industry because essentially the creation of a well educated, healthy young generation, which is the sole aim of education, cannot be compared with what may be described as an industrial process. Any problem connected with teachers and their salaries are outside the purview of the Act. Dealing with the other subordinate staff such as peons, drivers, etc., it was observed that this subordinate staff play such a minor subordinate and insignificant part that it

would be unreasonable to allow this work to lend its industrial colour to the principal activity of the University which is imparting education. It would be unreasonable to regard the work of imparting education as industry only because its minor, subsidiary and incidental work may seem to partake of the character of service which may fall u/s 2(j) of the Industrial Disputes Act.

14. In *Secretary, Madras Gymkhana Club Employees' Union Vs. Management of the Gymkhana Club*, it was held that the Madras Gymkhana Club is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act. The principal object of this club was to provide a venue for sports and games and facilities for recreation and entertainment. Though there was catering department which provides food and refreshments and also provides facilities for arranging dinners and parties, it was wrong to equate the catering facilities with a hotel. It was the nature of self-service of its members.

15. In the case of *Cricket Club of India Vs. Bombay Labour Union and Another*, it was further pointed out that selling tickets to spectators for entry into the stadium at the time of test matches did not make this activity of the club an undertaking in the nature of trade or business. It was, in fact, an activity in the course of promotion of the game of cricket.

16. In *The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi*, the Supreme Court had again occasion to consider the case of a hospital, namely, Safdar Jung Hospital, New Delhi. It was held that the hospitals run by Government and even private associations, not on commercial lines but on charitable lines or as part of the functions of Government department of Health cannot be included in the definition of "industry". The Supreme Court in this case overruled the decision in *State of Bombay v. Hospital Mazdoor Sabha* (supra). It was held that an industry exists only when there is 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. Before the work engaged is 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.

17. In *The Dhanrajgirji Hospital Vs. The Workmen*, following the above decision it was held that Dhanarajgiri Hospital, Sholapur, was not carrying on any economic activity in the nature of trade or business, nor it was rendering any material service by bringing in any element of trade or business in its activity and, therefore, not an industry.

18. In *Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal*, the Supreme Court had to consider the case of the Bombay Panjrapole. Though the Panjrapole was originally started as a charitable organisation, it was found on facts that the

institution deliberately diversified its objects from only tending to the sick, infirm or unwanted cattle by adopting the policy of keeping cattle not merely to their own sake but for the sake of improving the cattle population committed to its care with an eye to serve human beings by making large quantities of good milk available to them and thereby getting an income which would augment its resources. The activities of Panjarapole thus constituted an "industry" within the meaning of Section 2(j) of the Industrial Disputes Act.

19. Again in *Management of The Federation of Indian Chambers of Commerce and Industry Vs. Their Workman, Shri R. K. Mittal*, the Supreme Court held the Federation of Indian Chamber of Commerce is an industry within the meaning of Section 2(j) of the Industrial Disputes Act. It was held that once it is found that the activity of the organisation partakes the nature of a business or trade and there is co-operation of the employer and employee resulting in the production of material services, it is an industry notwithstanding that its objects are charitable or that it does not make a profit. It was held that the Federation of Indian Chamber of Commerce carried on systematic activities to assist its members and other businessmen and industrialists and these activities are business activities or material services, which are rendered to businessmen, traders and industrialists.

20. All the above cases were considered and discussed at length, in the recent decision of the Supreme Court in *The Workmen of Indian Standards Institution Vs. The Management of Indian Standards Institution*, . After an exhaustive consideration and on an analysis, the Supreme Court held by majority that the activities of the Indian Standards Institution fall within the category analogous to trade or business and must be regarded as "industry" as defined Section 2(j) of the Industrial Disputes Act. It was held further that an activity can be regarded as an industry, if there is relationship of employer and employees and former is engaged in "business", trade, undertaking, manufacture or calling of employer's and the latter, "in any calling, service, employment, handicraft or industrial occupation or avocation". Though "undertaking" is a word of large import, 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 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. It is also immaterial whether its objects are charitable or that it does not make profits. The Act also contemplates cases of industrial disputes where the Government or a local authority or a public utility service may be the employer. It also makes no difference that the material services rendered by the undertaking are in public interest.

21. Bearing in mind the above principles enuciated by the Supreme Court, it has

to be considered whether the Tirumala Tirupathi Devasthanam can be considered to be an industry and the persons employed by it are workmen and whether they can register themselves into a trade union.

22. The Tirumala Tirupathi Devasthanam consists of a group of religious institutions in Tirumalai and Tirupathi. They are together regarded as one religious institution for the purposes of Charitable and Religious Endowments Act. The main function of the Devasthanam is to arrange for the worship in its temples and to enable the pilgrims from all parts of India to visit temples and offer their prayers. It is, therefore, essentially a religious institution. Having regard to the enormous income, which this Devasthanam derives, it utilises the income for various educational and religious purposes. It has established several educational institutions and also it is one of the prime donors of the Venkateswara University. In order to cater to the thousands of pilgrims especially to the temple of Tirumalai, the Devasthanam also runs several canteens, dispensaries, etc. It has necessarily to provide for transport of the pilgrims, which it was undertaking on its own till recently. It has departments dealing with supply of electricity and water, not only to the pilgrims but to the members of the staff, Archakas, etc., and to the quarters constructed in Tirumala for the benefit of the pilgrims. Even though, having regard to the enormous flow of pilgrims throughout the year the Devasthanam has to maintain several departments, there can be no doubt that the essential character of the institution is that of a religious institution. We cannot, therefore, regard the Devasthanam generally as an industry within the meaning of Trade Unions Act or within the meaning of Industrial Disputes Act.

23. Sri Venugopala Reddy, learned Counsel for the respondent in W.P. No. 1866 of 1976, contended that whatever might have been the character of Tirumala Tirupathi Devasthanam at its inception, its activities have grown up to such tremendous proportions that apart from normal religious activities it has undertaken several economic activities, and supplies material services to the community. He, therefore, submitted that the Devasthanam as it functions today must be regarded as an industry in its wider sense as held by the Supreme Court in the above decisions. He graphically described the Devasthanam as a super corporation or a mini Government and he submitted that just as it was held in *The Corporation of the City of Nagpur Vs. Its Employees*, that a corporation though primarily intended to perform the functions of a local Government can be held to be an industry with regard to its functions in various departments like the drainage, electricity, engineering departments and so on, it must also be held that the Devasthanam must be regarded as an industry.

24. We are unable to agree with the contention that the Tirumala Tirupathi Devasthanam should be regarded generally as an industry. As pointed out in *University of Delhi and Another Vs. Ram Nath*, in considering whether a public institution is an industry or not, the predominant activity or object must be taken into consideration. Adopting this test we are of the view that the Tirumala

Tirupathi Devasthanam as a body cannot be considered to be an industry within the meaning of Section 2(j) of the Industrial Disputes Act or within the meaning of Trade Unions Act.

25. In Harihar Bahinipaty and Others Vs. State of Orissa, , it was held that Puri Jagannath temple cannot be considered to be an industry. It is not an institution where material human needs are not met. It is primarily a spiritual institution, dealing with the function of supplying prasadam it was observed that the temple does not serve the purpose of a hotel for catering foodstuffs. If the department is carrying on predominantly religious activity, the fact that some of its activities partake of a character of an industry would not make any difference.

26. Assam Rashtra Bhasha Prachar Samithi v. Their Workmen 1965-II L.L.J. 361 : AIR 1965 Assam 14, it was held that the activities, which were purely cultural and educational carried on by the Bhasha Samithi do not fall within the ambit of the definition of industry in the Industrial Disputes Act. Taking the general activity of the Samithi as a whole, which is purely cultural and educational, it cannot be said that the Samithi is an industry.

27. It is unnecessary to refer to the various other decisions cited at the Bar ,we are of the view that the Tirumala Tirupathi Devasthanam considered as an institution as a whole cannot be regarded as an industry within the meaning of the Industrial Disputes Act.

28. It was further argued by the learned Counsel for the respondents, that even though the Tirumala Tirupathi Devasthanam may be a religious or spiritual institution, there may be certain units of the Devasthanam which can be regarded as industries as in those departments economic activity is carried on and material services are rendered to the public. In those departments there is also cooperation between the employer and the employees. It was therefore argued that the electricity department and the water works department are two such units where material services are rendered and economic activities are carried on and these units can be regarded as industries within the meaning of the Industrial Disputes Act though the Devasthanamas a whole may be only a religious institution. We are inclined to agree with this submission. It is possible to envisage an institution which is generally not an industry but which is carrying on some industrial activities in certain departments. It is not impossible to conceive of the Tirumala Tirupathi Devasthanam carrying on such an activity even in the nature of trade or business because of its enormous resources and using the income for the benefit of its pilgrims. It cannot then be argued that the persons employed in those departments are not workmen and the activities carried on are not in the nature of industry. It has already been noticed that until recently the Devasthanam was operating a number of buses. It had naturally employed a large number of workmen as drivers, conductors, cleaners and so on and has also used to run one workshop. If fares were charged from the pilgrims and services were rendered in the shape of transport, such an activity would, in our view, be an activity in the nature of trade or industry.

29. In *Workmen employed in the Madras Pinjrapole Vs. Management of the Madras Pinjrapole and Another*, it was observed that where the activity is in its essence, religious or spiritual, for instance a temple or church, it could not be seriously contended that they were industries. Individual units of organisation, like a dairy farm, run by the institution might however constitute an "industry" though the society itself may not be one. Only broad guiding principles could be enunciated, but the actual decision would have to depend upon the evidence in each case. Similarly in *Travancore Devaswom Board, Trivandrum Vs. State of Kerala and Others*, , it was held that Maramat section of Travancore Devaswom Board functioning under the Travancore-Cochin Hindu Religious Institutions Act (XV of 1950) is an industry. It was held that the Maramat department is principally engaged for the construction of buildings habitually undertaken by the Travancore Devaswom Board, and its object was to render material service by improving the social and economic conditions of the Hindu community. Though the definition of "industry" Section 2(j) does not include regal or sovereign function of the State the Board was not discharging any functions in relation to the works Department.

30. In *Guruvayoor Devaswom v. Their Workmen* 1968 I L.L.J. 115, though it was held that the Devaswom as a whole was not an industry, the satram and livestock establishments in the case constitute separate units as distinguished from the temple. They were not inseparably connected with the religious services of the temple. Hence those two establishments could be "industry" as defined under the Act. In *Assam Rashtra Bhasha Prachar Samiti v. Their Workmen* 1965 II L.L.J. 361 : AIR 1965 Ass 14, already referred to while holding that the Rashatra Basha Samiti was not an industry the Court had to consider an argument whether the press run by the Samiti could be regarded as an industry. It was observed that there is no evidence that the Samiti has anything to do with the press or with the running of it. Apart from these decisions, in our view, the decision of the Supreme Court in *The Corporation of the City of Nagpur Vs. Its Employees*, , itself is an authority for the proposition that though an institution as a whole cannot be considered to be an industry, certain units can be regarded as industry within the meaning of Section 2(j) of the Industrial Disputes Act. In that case, it was held that the municipal corporation is generally an agent of the Government for exercising its local functions so far as the legislative functions and administrative functions of the corporation are concerned. But nevertheless the Supreme Court held that various units or departments of corporation were industries within the meaning of Section 2(j) or the Act. As a matter of fact, as many as fifteen departments of the corporation practically exhausting all the activities of the corporation were considered as industries for the purposes of the Industrial Disputes Act.

31. The learned Counsel for the petitioners placed considerable reliance on the decision of the Full Bench of the Orissa High Court in *Orissa Pipe and Water Workers' Union v. Registrar of Trade Unions-cum-Labour Commissioner, Orissa, and Ors.* (1975) 31 F.L.R. 421, where it was held that the Orissa Pipe and Water

Undertaking run with a view to supplying good water to the consumers within the State is not an industry and its employees are not workmen and the union is not entitled to registration u/s 8 of the Trade Unions Act. It was pointed out that the members of the union are the employees of the various establishments under the administrative control of the Chief Engineer, Public Health Department. In arriving at that conclusion, the Full Bench, after referring to the case of the Supreme Court in *The Corporation of the City of Nagpur Vs. Its Employees*, , observed that the Supreme Court had allowed the previous decision in *State of Bombay v. Hospital Mazdoor Sabha*, which was overruled in *Safdar Jung Hospital, New Delhi v. Kuldip Singh Sethi* and hence the conclusion of the Supreme Court in *Nagpur Corporation v. Its Employees*, (supra) has suffered from the same drawbacks as the *State of Bombay v. Hospital Mazdoor Sabha* (supra). We are unable to see how the overruling of the decision in *State of Bombay v. Hospital Mazdoor Sabha* in the latter decision of the Supreme Court in *Safdar Jung Hospital, New Delhi v. Kuldip Singh Sethi* (supra), in any way affects the correctness of the decision in *Nagpur Corporation v. Its Employees*, Our attention has not been drawn to any decision of the Supreme Court which dissented from the decision in *Nagpur Corporation v. Its Employees* (supra).

32. Reliance was also placed upon the decision in *Tirumala Tirupathi Devasthanams v. State of Madras* (1972) 29 S.T.C. 266, in which it was held that no tax is leviable on the sale of gold by the Tirumala Tirupathi Devasthanam. It was held in that case that the Devasthanam is not a dealer within the meaning of the Sales Tax Act and it will not be carrying on trade or business. In our view, though this decision may be helpful to the petitioner in the submission that the Tirumala Tirupathi Devasthanam cannot be regarded as carrying on trade or business, generally, it will not be of any assistance to the petitioner in considering whether a particular unit or department is a trade or industry within the meaning of the Act. It has also been brought to our notice that it was held by the Industrial Tribunal in the proceeding under the Industrial Disputes Act that the water works and electricity department are not industries in I.D. No. 10 of 1972. It was also held in Writ Petition No. 5097 of 1971 by this Court that the Tirumala Tirupathi Devasthanam is not an industry for the purpose of Bonus Act. Here again this Court had to consider the position of the Tirumala Tirupathi Devasthanam generally as a whole for considering whether the Bonus Act was applicable or not and it was not concerned with the question whether any particular unit or department of the Devasthanam was an industry. As far as the decision of the Tribunal is concerned, its decision is not in any way binding upon this Court. On the other hand, in I.D. No. 15 of 1969 the Industrial Tribunal held that the Transport Department of the Devasthanam was an industry. This decision was rendered on 15th September, 1973, whereas the decision in I.D. No. 10 of 1972 was rendered on 30th November, 1972. We are inclined to agree with the view expressed in the latter decision of the Tribunal. It was however brought to our notice that the matter is pending before the Supreme Court. It would appear that while holding that the Transport Department is an industry,

the Tribunal held that the workers were not entitled to bonus. In so far as the decision against the workmen is concerned, the workmen have preferred an appeal by way of special leave to the Supreme Court. But finding that the Transport Department is an industry has become final and has not been questioned by the Tirumala Tirupathi Devasthanam though it is pointed out by the learned Counsel for the petitioner that it is open to them to question that finding in a reference to the Supreme Court. We are making reference to the decision of the Industrial Tribunal not because such a decision is binding on us but to show that even the Tribunal has taken two different views, one with regard to water and electricity departments and another with regard to the transport department.

33. For the reasons stated above, we are of the view that the electricity and water departments of the Tirumala Tirupathi Devasthanam will be an industry or analogous to an industry and the employees in those departments would be workmen within the meaning of the Trade Unions Act, and they will be entitled to register themselves as a Trade Union. W.P. No. 840 of 1976 is dismissed.

34. As far as W.P. No. 1866 of 1976 is concerned, i.e., the union wherein all the employees are concerned generally as we have already held that the Devasthanam taken as a whole cannot be regarded as industry and it would not be permissible to allow all the employees generally to form into as an union and get themselves registered as a trade union. It is not necessary for us to consider the question whether the members of the union who are employees of any other department or units can register themselves as union as that would depend on the question whether a department falls within the definition of the industry, in the light of the decisions of the Supreme Court.

35. A further contention was raised that the employees of the Devasthanam are governed by the rules framed under the Hindu Religious and Charitable Endowments Act and the Trade Unions Act is not therefore applicable to such employees. It was submitted that the Charitable Endowments Act is a special Act dealing inter alia with the service conditions of the employees in charitable and religious institutions in general and the Tirumala Tirupathi Devasthanam in particular. Sri Panduranga Rao, learned Counsel for the petitioners drew our attention to Section 88(1) of the Hindu Religious and Charitable Endowments Act. It provides that the Executive Officer shall appoint all office holders and servants of the Tirumala Tirupathi Devasthanam whose salary is below Rs. 250 per month and the Board of Trustees shall appoint other non-hereditary office-holders and servants, The Government is empowered to make rules regarding the service conditions of these employees and until and unless such rules are made, the rules already made under the Madras (Act XIX of 1951) would continue to operate. In fact rules have been framed and the service conditions are recorded by such rules. It is therefore argued that a general law like Trade Unions Act has no application to the employees of the Tirumala Tirupathi Devasthanam.

36. We had occasion to consider a similar contention in a recent decision of ours in C.M.A. No. 368 of 1976, dated 8th July, 1977. There it was contended that the provisions of the Employees State Insurance Act are not applicable to the employees of charitable institutions coming under the Hindu Religious and Charitable Endowments Act. We rejected this contention, and for the same reasons given in our judgment, we hold that there is no substance in this contention. In particular, we may observe that workers forming a union and registering themselves as a trade union is not at all the subject-matter of any Rule which has already been framed nor can it be stated that the power to appoint office-holders and servants and recording their conditions of service would include the right to form trade unions and register themselves as trade unions. We have no hesitation in rejecting this contention.

37. In the circumstances, W. P. No. 1866 of 1976 is allowed. But we direct that each party should bear its own costs in both the writ petitions. Advocate's fee Rs. 100 in each case.

38. An oral application for leave to appeal to the Supreme Court of India is made by the petitions in W.P.No. 840 of 1976 and by the respondent in W.P. No. 1866 of 1976. As we are of the view that a substantial question of law of general importance which deserves consideration by the Supreme Court is involved in the case, we grant leave to appeal to the Supreme Court under Article 133 of the Constitution of India.