
(1962) 11 KL CK 0028
In the High Court Of Kerala
Case No : O.P. No. 363 of 1962

Travancore Devaswom Board, Trivandrum	APPELLANT
Vs	
State of Kerala and Others	RESPONDENT

Date of Decision : 20-11-1962

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : AIR 1963 Ker 250 : (1963) 2 LLJ 218

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : K. Velayudhan Nair, K.J. Joseph, M.C. Sen, C.R.B. Panicker and T.K.M. Unnithan, for the Appellant; Govt. Pleader for Respondent Nos. 1 and 2, S. Easwara Iyer and L. Gopalakrishnan Poti, for the Respondent

Final Decision : Dismissed

Judgement

C.A. Vaidialingam, J.—The question that arises for consideration in this writ petition is, as to whether the view of the Industrial Tribunal, expressed in Ex. P-I, that the Maramath Department of the Tra-vancore Devaswom Board is an "Industry" u/s 2(j) of the Industrial Disputes Act, 1947, Central Act 14 of 1947, is correct or not. The expression "industry" is defined u/s "2(j) as:

" "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen"".

In view of certain disputes that arose between the Travancore Devaswom Board and the workmen of the said Board in the Davaswom Maramath Work establishment, the State Government referred that dispute for adjudication to the Industrial Tribunal, Trivandrum, The various matters referred for adjudication by the . Industrial Tribunal have been mentioned in the award, Ex. P-I. They related to wage revision, dearness allowance, contributory-Provident Fund, leave and holiday facilities, permanency of the workers, preference to Maramab

workers in the regular establishment when vacancies arise, Cycle allowance to work establishment maistries, and change of designation of maistries.

2. The petitioner, Travancore Devaswom Board, apart from raising various contentions on merits, regarding the claims of the workers in respect of the several matters referred for adjudication, took a preliminary objection to the jurisdiction of the Tribunal to hear the matter, on the ground that the dispute referred for adjudication is not an "industrial dispute" because the Maramat Department of the Devaswom Board is not an industry u/s 2(j) of the Act. On a former occasion the Industrial Tribunal concerned overruled the objections raised by the Devaswom Board regarding the dispute not being an industrial dispute and held that the Maramat section of the Devaswom Board is an industry u/s 2(j). The Industrial Tribunal also recorded findings on the various matters referred to it for adjudication. That was by its award dated 11-9-1959.

3. That award was challenged by the present petitioner, in this Court in O. P. No. 1277 of 1959. The main contention that appears to have been taken in the said O. P. was that the Maramat Work Establishment concerned is not an industry u/s 2(j) of the Act. It appears to have been also urged before this Court that the evidence on record, and the findings of the Tribunal, are insufficient to come to a definite conclusion as to whether the Maramat section of the Board is an "industry" as defined in the Act or not.

4. Mr. Justice M. S. Menon, as he then was, and Mr. Justice T. K. Joseph, by order dated 18th November, 1960, accepted the contention of the parties to the effect that the evidence on record was not sufficient for a proper adjudication of the question. In this view, the learned Judges quashed the award and directed the Industrial Tribunal to deal with the matter afresh, after allowing both the parties to adduce such evidence as they consider fit in support of their contentions.

5. The learned Judges, in particular stated, that the type of evidence and finding that they have in mind are those which were available to the Supreme Court in their decision reported in *The Corporation of the City of Nagpur Vs. Its Employees*, . The learned Judges did not express any opinion regarding the adjudication made by the Tribunal on the various other matters referred to it for adjudication.

6. In consequence of the directions given by the learned Judges in O. P. No. 1277 of 1959, the matter was again taken up by the Industrial Tribunal. It will be seen that though both parties were given liberty to let in evidence, the Union alone appears to have placed some additional evidence by further examining the Secretary of the Union, who, no doubt, had been already examined as WW. 2.

7. In the award, Ex. P-i, which is under attack in these proceedings, the Industrial Tribunal has again recorded findings to the effect that the Maramat Department of the Travancore Deva-swoin Board is an industry u/s 2(j) of the Industrial Disputes Act. The exact reasoning of the Industrial Tribunal on this aspect will be adverted to by me later in this judgment.

8. The Industrial Tribunal again incorporated the various other findings it had recorded on an earlier occasion on the other points in controversy between the management and the Union.

9. At the outset I may state that Mr. Velayu-dhan Nair, learned counsel appearing for the Travancore Devaswom Board, has again raised before me only the question regarding the correctness of the view expressed by the Industrial Tribunal in the said award that the Maramat section of the Travancore Devaswom Board is an "industry" and in consequence the dispute that was referred to it for adjudication is an "industrial dispute". The learned counsel has not challenged the other findings recorded by the Industrial Tribunal on merits. Therefore, if the contentions of the learned counsel to the effect that the Maramat section of the petitioner Devaswom Board is not an industry fails, it follows that the award will have to be sustained in its entirety. In view of this, I am not referring in any great detail to the various findings recorded by the Industrial Tribunal on merits.

10. I may also preface my discussion by stating that the broader question as to whether the Travancore Devaswom Board itself, when it is functioning under the provisions of the Travancore-Cochin Hindu Religious Institutions Act, 1950, T-C Act 15 of 1950, is engaged in or carrying on an "industry" is not before me in these proceedings. The question that arises for consideration is a very limited one, namely, as to whether the Maramat Section of the petitioner Devaswom Board is an Industry u/s 2(j).

11. It will be seen that as early as 987 M. E. (18II-1812), as it was found that there was gross mismanagement of several of the Hindu temples in the Travancore State, it was decided that the State should assume control over them and accordingly the Government assumed management of the temples with their properties, movable and immovable. Later on, the management of several other Devaswoms also appears to have been assumed by the State.

12. Subsequently, it became evident that the properties of the Devaswom and the income accruing from them were mixed up with the other properties of the State and the public revenue which was collected under various heads. In consequence, it was also found that no separate accounts regarding the several properties of the Devaswoms or the income that accrued from those Devaswoms were kept. The general practice appears to have been to contribute from the general revenues of the State annually large sums for maintenance of the various Devaswoms.

13. His Highness the Maharaja of Travancore issued on 30th Meenam 1097, corresponding to 12th April 1922 a Proclamation styled Devaswom Proclamation. In the said Proclamation it is stated that by virtue of the Melkoims right vested in the State, the administration of certain Devaswom, together with their properties, owing to their mismanagement, was assumed by the Sirkar in or about 987 M. E. There is a reference in the said Proclamation to the income and properties of the Devaswoms being absorbed or getting merged in the other

properties and general revenues of the State and the expenditure of the Devaswoms being met from and out of the general revenues. Reference is also made to the fact that the properties of the Devaswoms have been treated for a long time as Pandaravagai lands and, therefore, it has become difficult to identify and separate the Devaswom properties as such. It is further stated that it has become necessary to provide for better management and more effective control of the Devaswom.

14. Under clause 3 of this Proclamation, it was provided that the Government is to maintain the Devaswom mentioned in the schedule from and out of the Devaswom funds which is to be constituted under clause (4) and an obligation to keep lift good repair the temples, buildings, etc., and to administer the Devaswoms in accordance with usage and custom was also cast upon the Government.

15. Clause 4 made provision for the constitution of a fund called the Devaswom Fund. As to how exactly the said fund is to be constituted is also given therein. There are various other matters mentioned in the said Proclamation which are not necessary to be adverted to for the present.

16. Originally, the Maramat department of the Devaswoms formed part of the Public works Department under Government and now the powers of management and administration of the Devaswoms have been entrusted to the Travancore Devaswom Board under the provisions of the Travancore-Cochin Hindu Religious Institutions Act, 1950. Section 3 of the Act vesting the administration of incorporated and unincorporated Devaswoms etc., is as follows:-

"The administration of incorporated and un incorporated Devaswoms and of Hindu Religious Endowments and all their properties and funds as well as the fund constituted under the Devaswom Proclamation, 1097 M. E. and the Surplus Fund constituted under the Devaswom (Amendment) Proclamation, 1122 M. E. which were under the management of the Ruler of Travancore prior to the first day of July, 1949, except the Sree Padmanabha Swami Temple, Sree Pandaravaga properties and all other properties and funds of the said temple, and the management of all institutions which were under the Devaswom Department shall vest in the Travancore Devaswom Board."

Section 24 of the T-C Act regarding the main tenance of Devaswoms etc., out of Devaswom Fund is as follows:

"The Board shall, out of the Devaswom Fund constituted u/s 25, maintain the Devaswoms mentioned in Schedule I, keep in a state of good repair the temples, buildings, and other appurtenances thereto; administer the said Devaswoms in accordance with recognised usages, make contributions to other Devaswoms in or outside the State, and meet the expenditure for the customary religious ceremonies and provide for the educational uplift, social and cultural advancement and economic betterment of the Hindu community".

17. Section 25 deals with the various items which go to make up the Devaswom Fund. Item No. 1 in Section 25 (a) relates to the sum of fifty-one lakhs of rupees mentioned in Article 238(10)(ii) of the Constitution of India as payable to the Devaswom Fund. Under clause (b) of Section 25, it is provided that from and out of this sum of rupees fifty-one lakhs, the Devaswom Board is to make an annual contribution of six lakhs of rupees towards expenditure in the Sree Padmanabhaswamy Temple.

18. I have referred to the matters mentioned above, because one of the contentions that has been taken by the Travancore Devaswom Board, both before the Industrial Tribunal and reiterated in this Court also, is that the functions, that are now being exercised by the Travancore Devaswom Board in respect of these Devaswoms, is what is called regal, or sovereign functions, which functions, according to the petitioner, cannot come u/s 2(j) of the Industrial Disputes Act. I will advert to that aspect a little later.

19. Before the Industrial Tribunal, both parties appear to have relied upon the various administration reports of the petitioner Devaswom Board for several years. In particular, the Administration Reports for 1950-51 to 1959-60 of the Board have been very strongly relied upon by the petitioner as well as the Union -- by the petitioner to establish, that the particular section is not an industry and by the Union to show that the Maramat section is an industry.

20. In fact, I may state that the conclusions of facts drawn from these various reports by the Industrial Tribunal have not been attacked before me by Mr. Velayudhan Nair, learned counsel for the petitioner.

21. Again, the Industrial Tribunal in particular has referred to the evidence of W. W. 2, who is a Maistry in the Mararnat Department and who has spoken to the set up of this Department and the nature of the work that the employees in this Department have to do. Neither that evidence nor the conclusions arrived at by the Industrial Tribunal on facts regarding the working of this department have been challenged by the learned counsel for the petitioner. No doubt, I am well aware of the main contention of the learned counsel for the petitioner that these findings, even if accepted in full cannot in law make the Maramat Section an industry u/s 2(j) of the Act.

22. It is desirable at this stage to set out broadly the various findings recorded by the Industrial Tribunal.

23. The view of the Industrial Tribunal is that the activities of the Devaswom Board cannot be considered to be in exercise of either regal or sovereign functions. The Tribunal is also of the view that u/s 24 of the Travancore-Cochin Religious Institutions Act, the Board is discharging (a) obligatory functions and (b) non-obligatory functions. From the Administration Reports produced by the Devaswom Board for the year 1950-51 to 1959-60 (Ex. W. 28 series), the Tribunal comes to the conclusion that the petitioner Board apart from effecting repairs and renovations to existing temples and constructing new temples, has

been engaging in various other activities with a view to achieve social and cultural and economic betterment of the Hindu Community. It refers to the fact that the Deaswom Board is running Dairy Farms, Orphanages and cottage industries.

24. The petitioner has been running training centres for cottage industries for the economic betterment of the Hindu community in several areas. It was also selling articles produced to the Devaswom employees and supplying these articles to the inmates of the orphanages.

25. The Tribunal again comes to the conclusion that the petitioner Board was running a workshop for the manufacture of furniture required, for the several offices under the Board; and in particular the workshop was under the control of the section officer and two public address equipments were in the charge of the Maramat Department. The Tribunal then adverts to the Board having organised co-operative societies and opening several schools and undertaking publication of several Almanacs and magazines. It also takes note of the fact that several Kottaram buildings belonging to the Devaswoms were repaired, renovated and given on rent by the Devaswom Board for Public offices. It also comes to the conclusion that the Board has even constructed several shop-buildings and given them on rent. The Industrial Tribunal also takes note of the fact, from the Administration Report in particular for the year 1959-60 that the Board has launched upon schemes for planting coconut seedlings, Rubber Plants etc.

26. Regarding the actual Maramat Department, the Tribunal adverts to the fact that it consists of Maistries, pump-drivers, Lascars, watchers, fitters, electricians etc. These employees are attached to the Maramat Department of the Board. Originally, the Maramat Department formed part of the Public Works Department of the State but with the transfer of the Administrative control of the Devaswom Department from the State Government to the Head of the State in or about 1948, the employees ceased to be employees of the Government. With the formation of the Devaswom Board in 1949, these employees have become employees under the Board.

27. The Industrial Tribunal adverts again to the administrative reports of the Board wherein it is stated that all important Maramat work relating to the Devaswoms and other institutions, under the control of the Board, are attended to by the Maramat Department which is kept as a separate unit under the Board.

28. Adverting to the work of the staff of the Maramat department, the Industrial Tribunal is of the view that the services of that personnel are utilised by the Devaswom Board in connection with the construction, maintenance, repair, etc., of schools, hostels, cottage industries, workshops, construction of buildings and shops given on rent, apart from their services being utilised for the repairs of temples and its appurtenances and also for constructing new temples.

29. In this connection, the Industrial Tribunal expresses the view that the Devaswom Board constructs special medical wards. But so far as that is

concerned, Mr. Velayudhan Nair, learned counsel for the petitioner, has stated that there is no material to show that the Devaswom Board has been running any hospital as such. On the other hand, according to the learned counsel, it has been only making contributions for that purpose. Therefore, I will leave this item out of account. In particular, the Industrial Tribunal also adverts to the nature of the work of the employees in the Maramat Department as spoken to by WW 2 and it comes to the conclusion that the Maramat Department is charged with the work of maintenance and repair of temples, Kottarams etc. and also the construction of buildings, institutions, workshops, shops etc. which are all undertaken by the Devaswom Board, in pursuance of the various schemes and programmes launched by the Devaswom Board; and they are all for the purpose of improving the social and economic condition of the Hindu community. The Tribunal comes to the conclusion that the work establishment personnel are deputed to perform these various type of work connected with the construction work. It also holds that the services of the work establishment personnel are being utilised for construction of school buildings, hostels, buildings and shops which are given on rent and for constructing buildings for establishing workshops, cottage industries, libraries etc. It also adverts to the fact that there are about 43 kottarams, most of which are given on rent for public offices and the maintenance, repair, electrification etc. of these buildings are being done by the Maramat Department.

30. Regarding the organisation of the Maramat Section, the Tribunal is of the view that there is a Maramat Engineer and for the efficient working of the Department, it is divided into divisions in charge of division officers and again sub-divided into various sections in charge of section officers.

31. These are the findings recorded by the Industrial Tribunal and as I mentioned earlier these findings have not been challenged by the learned counsel for the petitioner.

32. On these findings, the Industrial Tribunal proceeds to consider the question as to whether the Maramat Section can be considered to be an industry. It adverts to the decisions of the Supreme Court reported in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, and *The Corporation of the City of Nagpur Vs. Its Employees*, and is of the view that the Maramat Section forms an integral part of the Devaswom Department (sic Board) and it is principally engaged for construction, connected with the activities of the Devaswom which activities are systematically and habitually undertaken by the Board. The Industrial Tribunal is also of the view that these activities are carried on by the Board for rendering of material services to-the Hindu community with the help of employees of the Maramat section and such activities involve co-operation of the employer, namely, the Board, and the employees, namely, the work establishment personnel. The Industrial Tribunal has rejected the contention that the activities of the Devaswom Board can be characterised as the exercise of either regal or sovereign functions.

33. Mr. Velayudhan Nair, learned counsel for the petitioner, raised two contentions, namely, (i) the Travancore Devaswom Board, functioning under the Travancore-Cochin Hindu Religious Institutions Act, should be considered to be discharging either regal or sovereign functions and, therefore, the activities of the Board even in respect of the Maramat section cannot be considered to be an industry u/s 2(j) of the Act; and (2) that the essential duties that are performed by the Board under the Travancore-Cochin Hindu Religious Institutions Act are of the religious character, namely, keeping the temples, buildings and other appurtenances thereto in a good state of repair and it is for that purpose that the Maramat section is maintained by the Board, Any other minor functions or duties that the members of the said section are doing only incidental and ancilliary to the main functions of the Board as specified in Sections 3 and 24 of the Travancore-Cochin Hindu Religious Institutions Act.

34. On the other hand, Mr. Easwara Iyer, learned counsel for the Union, controverted strenuously the stand taken by the petitioner in these proceedings. According to the learned counsel, there is no question of the Board exercising any sovereign functions under the Travancore-Cochin Hindu Religious Institutions Act. It may be that the sovereign or the King in the olden days was in management of the Devaswoms as trustee. That certainly was not in exercise of a sovereign or regal power. What exactly is regal or sovereign power has been explained by the Supreme Court in the two decisions reported in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, and *The Corporation of the City of Nagpur Vs. Its Employees*, . Applying that test, the learned counsel urged that in this case there is no question of the Board exercising any sovereign or regal power. That is the answer of the learned counsel for the union so far as the first contention of MV. Velayudhan Nair is concerned.

35. So far as the second contention of the petitioner is concerned, here again Mr. Easwara Iyer, no doubt, was prepared to take a very large stand to the effect that even if the Board's function is only to construct new temples or keep in good repair the existing temples, it can never-the less be stated that the Board is rendering material services to the community or to a section of the community with the co-operation of these employees. The learned counsel urged that in this case it may not be necessary for him to take up that extreme position because the provisions of Section 24 of the Travancore-Cochin Hindu Religious Institutions Act clearly specify the various matters which the Board can do. While the first part of Section 24 casts certain obligations on the Devaswom Board, namely, of keeping in good repair temples, buildings and other appurtenances thereto and administer the Devaswoms in accordance with recognised usages and meet the expenditure for the customary religious ceremonies, the latter part of the section gives absolute freedom and jurisdiction to the Devaswom Board to take up schemes for the educational uplift, social and cultural advancement and economic betterment of the Hindu community. In this case, the various functions discharged by the Maramat section of the Devaswom Board have been dealt with

and findings recorded by the Industrial Tribunal and they will clearly show that the activities of the Mara-math section will be an undertaking under the definition of the expression "industry" in Section 2(j) of the Act.

36. Prima facie it may appear a bit startling to hold that certain activities of the Board functioning under the Travancore-Cochin Hindu Religious Institutions Act can be characterised as carrying on an "industry" u/s 2(j) of the Industrial Disputes Act. But a decision regarding this question, one way or the other has largely to be arrived at on the basis of the principles laid down by four decisions of the Supreme Court on the matter, namely, *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , *The Corporation of the City of Nagpur Vs. Its Employees*, ; *The Ahmedabad Textile Industry's Research Association Vs. The State of Bombay and Others*, , and *The National Union of Commercial Employees and Another Vs. M.R. Meher, Industrial Tribunal, Bombay and Others*, .

37. The first contention of Mr. Velayudhan Nair, learned counsel for the petitioner, that the Board must be considered to be exercising sovereign or regal functions under the Travancore-Cochin Act can be disposed of straightway. I am not impressed with the contention of the learned counsel that the Board is exercising any such functions. No doubt, originally His Highness the Maharaja of Travancore may have taken over the management of the Devaswoms concerned and was administering them as a trustee. In my view, the administration of the temples by the Ruler cannot be considered to be by virtue of regal or sovereign power. The management and administration of Devaswoms concerned by the Ruler must have been only as a trustee of the temples and Devaswoms and that is the function that is now being discharged by the Travancore Devaswom Board by virtue of the powers vested in it under the Travancore-Cochin Hindu Religious Institutions Act. As to what are regal or sovereign activities have been considered by the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, . Mr. Justice Gajendragadkar, speaking for the court, states that the activities of the Government which can be properly described as regal or sovereign activities are outside the scope of Section 2(j) and those are functions which a constitutional Government can and must undertake for governance and which no private citizen can undertake. The learned Judge at page 615 observes :

"The activities which do not fall within Section 2(j) and which are described as governmental or regal or sovereign have been pithily described by Lord Watson as "the primary inalienable functions of a constitutional Government" (Vide : *Coomber v. Justices of Berks* (1883) 9 AC 61); and it is only these activities that are outside the scope of Section 2(j)".

38. Again in the later decision in *The Corporation of the City of Nagpur Vs. Its Employees*, Mr. Justice Subba Rao, dealing with this matter, states that however, wide the definition of "industry" may be, it cannot include regal or sovereign functions of the State. The learned Judge refers to the description given by Lord

Watson in (1883) 9 A. C. 61 of regal functions as administration of Justice, maintenance of order and repression of crime and these are to be considered to be primary and inalienable functions of a constitutional Government. The learned Judge again at page 681 states :

"Issacs, J., in his dissenting judgment in *Federated State School Teacher's Association of Australia v. State of Victoria* (1928) 41 C. L. R. 569, concisely stated thus at p. 585 :

"Regal functions are inescapable and inalienable. Such are the legislative power, the administration of laws, the exercise of the judicial power. Non-regal functions may be assumed by means of the legislative power. But when they are assumed the State acts simply as a huge corporation, with its legislation as the Charter. Its action under the legislation, so far as it is not regal execution of the law is merely analogous to that of a private company similarly authorised".

These words clearly mark out the ambit of the regal functions as distinguished from the other powers of a State. It could not have been, therefore, in the contemplation of the Legislature to bring in the regal functions of the State within the definition of industry and thus confer jurisdiction on Industrial Courts to decide disputes in respect thereof. We, therefore, exclude the regal functions of a State from the definition of industry".

This observation of the Supreme Court, and in particular, the extract from the dissenting judgment of Issacs J., given above, will show that regal functions are the legislative power, the administration of laws and the exercise of judicial power.

39. Applying the various principles referred to above, in my view, it cannot certainly be stated that the Travancore Devaswom Board is discharging any regal or sovereign powers, when it functions under the provisions of the Travancore-Cochin Hindu Religious Institutions Act, in relation to the Works Department.

40. The second contention, as I mentioned earlier, of the learned counsel is that the various findings recorded by the Industrial Tribunal will not in law constitute the Maramath section of the petitioner Board an industry u/s 2(j) of the Act."

41. No doubt, I am not prima facie inclined to accept the very large contention of Mr. Easwara Iyer, learned counsel for the Union, that even if the Maramath section is employed solely and exclusively in connection with the construction of temples or repair and maintenance of temples, nevertheless it must be considered that the Devaswom Board is rendering material service to the public and that it can be considered to be an industry and it does not partake of the nature of rendering any religious or spiritual service. But it is not necessary for me to investigate this aspect further in view of the various findings recorded by the Industrial Tribunal regarding the other activities carried on." by the Devaswom Board in connection with which the services of the Maramath section are being utilised.

42. But I may state that the Madras High Court (Anantanarayanan and

Venkatadri JJ.) had occasion to consider a somewhat similar contention in their decision reported in *Workmen Employed in Madras Pinjrapole v. Madras Pinjrapole* 1962 (2) Lab LJ 472 : (AIR 1963 Mad 89). The learned Judges had to consider whether the Madras Pinjrapole can be considered to be an industry u/s 2(j) of the Act. Mr. Justice Anantanarayanan speaking for the Court observed at page 478 (at p. 93 of AIR) as follows:

"But where the activity is, in its essence, religious or spiritual, we do not think that the definition would apply. For, we do not think that it could be seriously contended that a temple or a church is an "industry", because human wants are satisfied in such an institution, and there might well be an organisation of labour, such as priests, or archakas. A meditation centre, similarly, can-not be termed as "industry", though it may employ workmen; the same remarks would apply to any religious group, organised as such (as for instance, in ashram or vedante centre) or even a large family living together for the satisfaction of the mutual impulses of love and affection. How far the Madras Pinjrapole can claim the application of this principle, would depend on the extent to which it is essentially an institution satisfying, certain purely spiritual needs. As we observed-earlier, the complexion might be altered by later developments, and material economic activities might have obtruded so largely into the picture as to render the institution, as at present organized and acting an "industry within the meaning of the Act. Equally, individual units of the organization (like a distinct dairy farm) might constitute an "industry" though the society itself may not be. We can only enunciate the broad guiding principles. The actual decision will have to be arrived at only after the record of adequate evidence, by the labour Court in the light of these principles".

But as I mentioned earlier it is not really necessary for me to go further into that aspect.

43. Section 24 of the Travancore-Cochin Hindu Religious Institutions Act consists of two-parts. In the first part of Section 24 the Board has been charged with the duty or obligation of maintaining the Devaswoms referred to in the schedule, keep in a state of good repair the temples and buildings and other appurtenances thereto, administering the said Devaswoms in accordance with recognised usages and meeting the expenditure of the customary religious ceremonies. The second part of Section 24, which in my view is very important for the purpose of this case, gives power or jurisdiction to the Devastvom Board to utilise the Devaswom Fund for providing for the educational uplift, social and cultural advancement and economic betterment of the Hindu community. That is, if the Devaswom Board embarks upon schemes providing for the educational uplift, social and cultural advancement and economic betterment of the Hindu community it cannot certainly be stated that the Board in any manner acts beyond its jurisdiction or does anything which is not contemplated by the statute itself. No doubt, when the Board functions strictly in accordance with the Erst part of Section 24, the position as to whether such activities will be an industry u/

s 2(j) of the Industrial Disputes Act will be a matter which will have to be very seriously considered, if that question arises. But in this case I have already referred to the findings recorded" by the Industrial Tribunal and which are not attacked in these proceedings, to the effect that the Devaswom Board was constructing school buildings, hostels, buildings and rooms given for rent constructing buildings for conducting workshops, cottage industries etc., and attending to the maintenance, construction and repairs of these buildings etc. The further finding is that the services of the Maramat Department were being utilised. No doubt, there is this fact, namely, that the services of the personnel in the Maramat section were also being utilised for the purpose- of effecting repairs to temples and for constructing new temples also. But, in my view, the position certainly becomes different when the ser-" vices of the Maramat section are being used by the Board in connection with the schemes formulated by the Board for the purpose of social and economic betterment of the Hindu community.

44. A word of caution is administered by Mr. Justice Gajendragadkar at page 614 in the decision reported in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, . The learned Judge states:

"It is clear, however, that though Section 2(j) uses words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings. If all the words used are given their widest meaning, all services and alt callings would come within the purview of the definition; even service rendered by a servant purely in a personal or domestic matter or even in a casual way would fall within the definition. It is not and cannot be suggested that in its wide sweep the word "service" is intended to include, service howsoever rendered in whatsoever capacity, and for whatsoever reason. We must, therefore, consider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in Section 2(j); and that no doubt is a somewhat difficult problem to decide";

45. The learned Judge also holds that u/s 2(j) an activity can and "must be regarded as an industry, even though the profit motive may be absent and there is an absence of investment of any capital. The learned Judge also observes that no doubt these two important attributes are commonly associated with trade or business but those two elements need not be present in an industry u/s 2(j). The learned Judge, if I may say so with respect, appreciates the difficulty to enumerate either definitely or exhaustively the attributes the presence of which will make ,an activity, an undertaking u/s 2(j). But the learned Judge states at page 616:

"..."..... as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material service to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its

object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organised or arranged, the condition of the co-operation between the employer and the 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(i) applies".

From the principles laid down by the learned Judge and extracted above, it will follow broadly that an activity systematically or habitually undertaken (a) for the production or distribution of goods or (b) for the rendering of material services to the community at large or a part of such community with the help of employees will be an undertaking.

46. The learned Judge then considers the question as to whether quid pro quo is necessary for bringing an activity u/s 2(j). The learned Judge holds that this element is not necessary. Ultimately the learned Judges in that case came to the conclusion that the J. J. Group of Hospitals, that they were dealing with, must be considered to be an industry.

47. More or less similar principles have been laid down by the Supreme Court in the later decision in *The Corporation of the City of Nagpur Vs. Its Employees*, . In that case the learned Judges had to consider the question as to whether the various services rendered by a Corporation are to be considered as coming within the scope of the definition "industry" u/s 2(j) of the Act. . Mr. Justice Subba Rao, speaking on behalf of the Court again reiterates most of the principles laid down in the earlier decision. At page 683 the learned Judge observes:

"Barring the regal functions of a municipality, if such other activities of it, if undertaken by an individual would be industry, then they would equally be industry in the hands of a Municipality. It would be unrealistic to draw a line between a department doing a service and a department controlling or feeding it. Supervision and actual performance of service are integral part of the same activity".

Therefore, from the above extract it will be seen that if the activities in question are undertaken by an individual it would be an industry, then they would equally be an industry either, in the hands of the Municipality in question in that case or in the case of any other statutory public body.

48. At page 684 the learned Judge summarises the position as follows:

"The result of the discussion may be summarised thus: (I) The definition of "industry" in the Act is very comprehensive. It is in two parts: one part defines it from the standpoint of the employer and the other from the standpoint 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 recognises the basic concept that the activity shall be an organised 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 a 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 an industry, connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharges 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 purposes of the Act".

49. After laying down the principles referred to above, the learned Judge takes up each of the departments of the Nagpur City Corporation. Item No. 12 dealt with by the learned Judge related to the Public Works Department. After considering the scheme of organisation of that department and the nature of its functions the learned Judge is of the view that the services rendered by that Department are such that they can equally be done by private individuals and they come under the definition of "industry" and the learned Judge held that the Public Works Department is an industry.

50. Item No. 15 related to the education department of the Nagpur Corporation. There again, the learned Judge comes to the conclusion that the service done by the Corporation in the education department can equally be done by private persons and as such it satisfies the definition of industry u/s 2(j).

51. In *The Ahmedabad Textile Industry's Research Association Vs. The State of Bombay and Others*, the Supreme Court had to consider the question as to whether the Ahmedabad Textile Industries Research Association carries on an activity coming within the definition of the word "industry". No doubt, the contention that appears to have been taken before the learned Judges was that the activity of the said Research Association is purely educational and cultural and, therefore, it cannot be considered to be an industry.

52. Mr. Justice Wanchoo, delivering judgment on behalf of the Supreme Court, applying the various tests laid down in its earlier decision in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, after examining the objects of the Association came to the conclusion that the Research Association must be considered to be carrying on an activity which comes within the definition of the word "industry" u/s 2(j).

53. The Supreme Court again had to consider in *The National Union of Commercial Employees and Another Vs. M.R. Meher, Industrial Tribunal, Bombay and Others*, as to whether a Solicitor's Firm is an industry u/s 2(j) of the Act. Mr. Justice Gajendragadkar speaking on behalf of the Court proceeds on the basis

that a decision will have to be given on the basis of the principles laid down by the Supreme Court in *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, . The learned Judge emphasises that when the Supreme Court in the earlier decision referred to the organisation of an undertaking involving co-operation of capital and labour or the employer and the employees, what is meant is that co-operation essential and necessary for the purpose of rendering material service or for the purpose of production. Applying those principles the learned Judges are of the view that the services rendered by a Solicitor functioning either by" himself or working together in partnership Tenders service, which is essentially individual, that service rendered depends upon the professional equipment, knowledge and efficiency of the solicitor concerned. The learned Judges are also of the view that it may be stated that there is a kind of co-operation between solicitor and his employees; but that co-operation has no direct or immediate relation to the professional service which the solicitor renders to his client. Ultimately the learned Judges came to the conclusion that the solicitor's firm cannot be considered to be an industry u/s 2(j) of the Act.

54. In my view, having due regard to the principles laid down by the Supreme Court and in view of the findings recorded by the Industrial Tribunal regarding the services performed by the Travancore Devaswom Board in co-operation with its employees in the Maramat section, it must be held that the Maramat establishment of the Devaswom Board is an undertaking and as such an "industry" u/s 2(j) of the Industrial Disputes Act. Admittedly the Board has been launching upon various schemes for the social, educational and economic betterment of the Hindu community. In the decision reported in *The Corporation of the City of Nagpur Vs. Its Employees*, I have already pointed out that the Supreme Court is of the view that the Public Works Department of the Nagpur Corporation, which is more or less analogous to the Maramat Section of the Travancore Devaswom Board, is an undertaking coming within the definition of an "industry" u/s 2(j) of the Act. No doubt, I am aware of the fact that we are not concerned with the education department as such of the Devaswom Board. Nevertheless, the finding of the Industrial Tribunal is that the services of the personnel of the Maramat section are being utilised for the purpose of constructing various schools. Such a scheme can very well be undertaken by the Devaswom Board under the latter part of Section 24 of the Act. If the running of an education department, as such can be considered an industry as the Supreme Court held in *The Corporation of the City of Nagpur Vs. Its Employees*, in my view, it can certainly be held that when the services of the members of the Maramath section, in question, are utilised for the purpose of building several schools, the said Maramath section can be considered to be an industry u/s 2(j) of the Act.

55. I am not inclined to accept the contention of Mr. Velayudhan Nair, learned counsel for the petitioner, that inasmuch as the main functions that the Board is discharging are only in connection with the temples, the fact that incidentally the

Devaswom Board may have constructed some schools or other buildings including shop building is not of any consequence.

56. I have already referred to the provisions of Section 24. Whatever may be said when the Board engages itself in the activities referred to in the first part of Section 24, in my view, when the Board engages itself in the activities which are within its jurisdiction and are provided for under the latter part of Section 24 of the Act, on the findings arrived at by the Industrial Tribunal in this case, it can certainly be held that the Maramath section of the Devaswom Board is an industry u/s 2(j) of the Act.

57. The Maramath Department is principally engaged for the, construction of buildings connected with buildings for dairy farms, schools hostels, cottage industries and workshops and of buildings and shops which are given on rent and these activities are systematically and habitually undertaken by the Board as will be seen by the various administration reports and in that the co-operation of the members of the Maramath section is absolutely essential and the object is to render material service, by improving the social and economic conditions of the Hindu community. Therefore, in my opinion, the conclusion that the Maramath section of the petitioner Board is carrying on an activity which clearly comes within the definition of the word "industry" in Section 2(j) is irresistible.

58. Therefore, it follows that the view of the Industrial Tribunal that the Board is an industry under Section 2(j) is correct. As no other points have been raised before me, the award in question is confirmed and the writ petition is dismissed. Parties will bear their own costs.