A **MANAGEMENT OF SAFDARJUNG HOSPITAL, NEW DELHI**

v.

KULDIP SINGH SETHI
(With Connected Appeals)

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April 1, 1970

[M. HIDAYATULLAH, C.J., J. C. SHAH, K. S. HEGDE, A. N. GROVER, A. N. RAY AND I. D. DUA, JJ.]

Industrial Disputes Act (14 *of* 1947), *s.* 2(*j*), (*k*), *n*(*s*) *and First Schedule—Hospital when an industry—Inclusion of hospitals in the* C *Schedule—Effect of.*

(1) The definition of industry in s. 2(j) of the Industrial Disputes Act, 1947 is in two parts. But it must be read as a whole. So read it denotes a collective enterprise in which employers and employees are associated. It does not exist either by employers alone or by employees alone. It exists only when there is a relationship between employers and employees, the former engaged in business, trade, undertaking, manufac- D ture or calling of employers and the latter engaged in any calling, service, employment handicraft or industrial occupation or avocation. But every case of employment is not necessarily productive of an industry. A workman is to be regarded as one employed in an industry only if he is following one of the vocations mentioned in conjunction with his employers engaged in the vocations mentioned in relation to the employers, namely, any business, trade, undertaking manufacture or calling of employers. In the collocation of the terms and their definitions these E terms have a definite economic content of a particular type and on the authorities of this Court have been uniformly accepted as excluding professions and are only concerned with the production, distribution and consumption of wealth and the production and availability of material services. Industry has thus been accepted to mean only trade and business, manufacture, or undertaking analogous to trade or business for the production of material goods or wealth and material services. Material services involve an activity carried on through co-operation F between employers and employees to provide the community with the use of something such as electric power, water, transportation, mail delivery, telephones and the like. In providing these services there may be employment of trained men and even professional men, but the emphasis is not on what they do but upon the productivity of a service organised as an industry and commercially valuable, in which, something is brought into existence quite apart from the benefit to particular individuals; and it is the production of this something which is described as G the production of material services. Thus, the services of professional men involving benefit to individuals according to their needs, such as doctors, teachers, lawyers, solicitors, etc. are easily distinguishable from an activity such as transport service. They are not engaged in an occupation in which employers and employees cooperate in the production or sale of commodities or arrangement for the production or sale or distribution and their services cannot be described as material services and H are outside the ambit of industry. It, therefore, follows that before an industrial dispute can be raised between employers and employers or between employers and employees or between employees and employees in relation to the employment or non-employment or the terms of employment or with the conditions of labour of any person, there must first

be established a relationship of employers and employees associating together, the former following a trade, business, manufacture, undertaking or calling of employers in the production of material goods and material services and the latter following any calling, service, employment, handicraft or industrial occupation or avocation of workmen in aid of the employers' enterprise. It is not necessary that there must be profit motive, but the enterprise must be analogous to trade or business in a commercial sense. [183 H; 184 G-H; 185 C, H; 186 H; 187 A-B, E-G; 188 F-H] A B

(2) The decision in *State of Bombay* v. *Hospital Mazdoor Sabha*, [1960] 2 S.C.R. 866 holding that a Government hospital was an industry took an extreme view of the matter and cannot be justified, because: (a) it was erroneously held that the second part of the definition of 'industry' was an extension of the first part, whereas, they are only the two aspects of the occupation of employers and employees in an industry; (b) it was assumed that economic activity is always related to capital or profit-making and since an enterprise could be an industry without capital or profit-making it was held that even economic activity was not necessary; and (c) it was held that since a hospital could be run as a business proposition and for profit by private individuals or groups of individuals a hospital run by Government without profit must also bear the same character. This test was wrongly evolved from the observations in *Federated Municipal and Shire Council Employees of Australia* v. *Melbourne Corporation*, 26 C.L.R. 508, which only indicate that in those activities in which Government take to *industrial ventures* the motive of profit-making and absence of capital are irrelevant. The observations, on the contrary, show that industrial disputes occur only in operations in which employers and employees associate to provide what people want and desire, that is, in the production of material goods or services, and not the 'satisfaction of material human needs'. If however a hospital, nursing home or dispensary is run as a business, in a commercial way there may be found elements of an industry there. Then the hospital is more than a place where persons can get treated for their ailments and it becomes a business. [189 D-H; 190 E-F] C D E

Hospital Case [1960] 2 S.C.R. 866 over-ruled.

(3) Under s. 2(n)(vi) any industry specified in the First Schedule to the Act could be notified by the appropriate Government as a public utility service. *But what could be declared had to be an industry in the first place.* The original entries in the Schedule were five and obviously only general headings were given. For example 'coal' is not an industry but certain aspects of dealing with coal would be 'industry' and that is what is intended. The dealing must be an industry in which there are employers and employees cooperating in the production of material goods or material services. Similarly, cotton, textiles or food stuffs or iron and steel, as the entries stand, are not industries. Therefore, the heading of the First Schedule and the words of cl. (vi) presuppose the existence of an industry which may be notified as a public utility service, for special protection under the Act. [191 F-H] F G

When the list was expanded in the First Schedule and certain services were mentioned, the intention could not have been otherwise. It could not have been intended by Parliament that the entire concept of 'industry' in the Act could be ignored and anything could be brought in as industry. Most of the new entries are items in which an industry proper involving trade, business, manufacture or something analogous to business can be found. Therefore, to apply the notification, the condition precedent of the existence of an industry has to be satisfied. If there is an industry H

A which falls within the item named in the First Schedule, then alone can it be notified to be classed as a public utility service. To hold otherwise would largely render useless all the definitions in the Act regarding industry, industrial disputes etc., in relation to the scheduled items. It is hardly to be thought that notifications can issue in respect of enterprises which are not 'industry' to start with. Parliament could not have attempted to declare that notwithstanding the definitions of 'industry', 'industrial dispute', 'workman' and 'employer' every hospital is to be regarded as an industry, B by including 'service in hospitals and dispensaries' in the First Schedule. [192 B-C, F-H]

(4) The activities in the cases of *Secretary, Madras Gymkhana Club Employees Union* v. *Management of the Gymkhana Club* [1968] 1 S.C.R. 742, *University of Delhi* v. *Ramnath*, [1964] 2 S.C.R. 703 and *National Union of Commercial Employees* v. *M. R. Meher*, [1962] Supp. 3 S.C.R. 157 were rightly held not be industries, because, in the first the manage- C ment was a non-profit making members' club not employed in trade or industry, and the other two were cases in which the services rendered by the employees were in aid of professional men and not productive of material wealth or services. [188 C-F]

Hotel and Catering Industry Training Board and Automobile Proprietary Ltd. (1969) 1 W.L.R. 697 H.L.; S.C.; (1968) 1 W.L.R. 1526 and [1968]3 All. E.R. 399 C.A., referred to.

D Therefore, the Safdarjung Hospital which is run as a department of the Government, the Tuberculosis Hospital which is a charitable and research institute, and the Kurji Holi Family Hospital which is entirely charitable, are not industries within the meaning of the Industrial Disputes Act. 1947. [193 C; 194 B-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1705 of E 1969.

Appeal by special leave from the order dated February 21, 1959, of the Central Government Labour Court, Delhi in I.C.A. No. 2 of 1968 and Civil Appeal No. 1781 of 1969.

Appeal by special leave from the order dated February 24, 1969 F of the Additional Industrial Tribunal, Delhi in I.D. No. 73 of 1968 and Appeal from the judgment and order dated February 21, 1969 of the Patna High Court in Civil Writ Jurisdiction Case No. 730 of 1968.

Niren De, Attorney-General and *S. P. Nayar*, for the appellant G (in C. A. No. 1705 of 1969).

M. K. Ramamurthi, E. C. Agarwala, R. P. Agarwala and *M. V. Goswami*, for the respondent (in C. A. No. 1705 of 1969).

H. R. Gokhale, Jitendra Mahajan, for the appellant (in C.A. No. 1781 of 1969).

H *M. K. Ramamurthi, J. Ramamurthy* and *Madan Mohan*, for the respondents (in C. A. No. 1781 of 1969).

H. R. Gokhale, M. C. Bhandare, for the intervener.

A. K. Sen, Ranen Roy and *A. K. Nag*, for the appellant (in C. A. No. 1777 of 1969). A

D. Goburdhun, for respondent No. 1 (in C. A. No. 1777 of 1969).

P. N. Tiwari and *Shiva Pujan Singh*, for respondent No. 3 (in C. A. No. 1777 of 1969). B

The Judgment of the Court was delivered by

Hidayatullah, C.J. This judgment will dispose of Civil Appeals Nos. 1705 of 1969, 1781 of 1969 and 1777 of 1969. The first is an appeal by the Management of Safdarjung Hospital, New Delhi. The second by the Management of Tuberculosis Hospital, New Delhi and the third by the Kurji Holy Family Hospital, Patna. The first two are filed by special leave and the third by certificate. They call in question respectively the order of the Central Government Labour Court, Delhi dated 21st February, 1969 on an application under s. 33C(2) of the Industrial Disputes Act, 1949, the order of the Presiding Officer, Additional Industrial Tribunal, Delhi dated 24th February, 1969 and the judgment and order dated 21st February, 1969 of the Patna High Court. They raise a common question of law whether these several hospitals can be regarded as industries within the meaning of the term in the Industrial Disputes Act. They also raise different questions on merits which will be considered separately. The facts of the three cases may be noticed briefly before we begin to examine the common question of law mentioned above. C D E

C.A. No. 1705 of 1969.

The Management of Safdarjung Hospital, New Delhi was the respondent in a petition under s. 33C(2) of the Industrial Disputes Act, 1947 in a petition by the present respondent Kuldip Singh Sethi, a Lower Division Clerk in the Hospital, for computation of the amount of salary etc. due to him in the pay scale of store keepers. Kuldip Singh Sethi was appointed as a Store-keeper on October 26, 1956 in the pay scale of Rs. 60—5—75. This scale was revised to Rs. 110—180 on July 1, 1959 in accordance with the recommendations of the Second Pay Commission. Two or three months later the pay was re-fixed and the time scale was Rs. 110—131 with usual allowances. On July 1, 1962 his basic pay was fixed at Rs. 131. On November 26, 1962 the Government of India in the Ministry of Health re-revised the pay scales of Store-keepers to Rs. 130—5—160—8—200—EB—8—280—10—300 with the usual allowances. The order was to take effect from the date of issue. Kuldip Singh Sethi complained by his petition that the Management of the Hospital had failed to give him pay in this scale and claimed Rs. 914 for the period November 26, 1962 to May 31, 1968. F G H

A In reply to his petition the Management contended that Kuldip Singh Sethi was not a workman but a Government servant governed by the Conditions of Service for Government Servants and hence he could not invoke the Industrial Disputes Act since the Safdarjung Hospital was not an industry. The Tribunal, following the decision of this Court in *State of Bombay* v. *Hospital Mazdoor Sabha*(1) has held that the Hospital is an 'industry', that Kuldip Singh Sethi is a 'workman' and hence he is entitled to take recourse to s. 33C(2) of the Industrial Disputes Act. On merits his claim is found sustainable and he is given an award for Rs. 914. We need not mention at this stage the grounds on which the merits of his claim are resisted. The point of law that arises in the case C is whether the Safdarjung Hospital can be properly described as an 'industry' as defined in the Industrial Disputes Act.

C.A. No. 1781 *of* 1969.

In this case there is a dispute between the Management of the Tuberculosis Hospital, New Delhi and its workmen represented D by the Aspatal Karamchari Panchayat regarding pay scales, and other facilities demanded by the workmen. The Management has taken the preliminary objection that the Industrial Disputes Act does not apply since the Hospital is not an industry and is not run as such. The Management, therefore, questions the reference to the Tribunal under s. 10(1)(d) of the Industrial Disputes Act. E A preliminary issue is raised :

"Is T.B. Hospital an industry or not ?"

In support of the case that the Hospital is not an industry, the Management emphasises the functions of the Hospital. It is pointed out that the Hospital is run by the Tuberculosis Association F of India as a research institute where training is given to Medical graduates of the Delhi University for the D.T.C.D. and D.C.H. Courses, and postgraduates and undergraduates of the All India Institute of Medical Sciences are also provided training and nurses from the Delhi College of Nursing, Safdarjung, Lady Hardinge and Holy Family Hospitals receive training. The Hospital, it is G admitted, has paid and unpaid beds but it is submitted that treatment of tuberculosis is a part of research and training and education, and, therefore, the Hospital has affinity to a University and not to a Hospital proper. It is, therefore, contended that this Hospital is not an industry. The Tribunal holds that neither the research carried on, nor the training imparted, nor the existence of the Tuberculosis Association of India with which the Hospital H is affiliated makes any difference and the case falls within the ruling of this Court in the *Hospital Mazdoor Sabha*(1) case. The

(1) [1960] 2 S.C.R. 866.

Tribunal holds the Tuberculosis Hospital, New Delhi to be an industry. A

C.A. No. 1777 of 1969.

The appeal arises from a writ petition filed in the High Court of Patna. The Kurji Holy Family Hospital took disciplinary action against two of its employees and the matter was taken up by the Kurji Holy Family Hospital Employees Association and the State of Bihar made a reference to the Labour Court, Patna under s. 10 of the Industrial Disputes Act. Before the Tribunal, the Management of the Hospital took the objection *inter alia* that a hospital was neither a trade nor a business, nor an industry as defined in the Industrial Disputes Act and as such the provisions of the Industrial Disputes Act were not applicable and the reference was incompetent. The High Court holds this point against the Management, following the *Hospital Mazdoor Sabha*(1) case. The later case of this Court reported in *Secretary, Madras Gymkhana Club Employees Union* v. *Management of the Gymkhana Club*(2) is held not to have weakened the effect of the decision in the case relied upon. B C D

It is thus that the three cases came before us and were heard together. Counsel in these cases submit that the ruling in the *Hospital Mazdoor Sabha*(1) case has now been considerably shaken by the pronouncement in the *Madras Gymkhana Club*(2) case where it was observed that the *Hospital Mazdoor Sabha*(1) case was one which might be said to be on the verge and that there were reasons to think that it took an extreme view of an industry. Relying on this observation, counsel in the three appeals asked for a reconsideration of the *Hospital Mazdoor Sabha*(1) case although they conceded that it was not yet overruled. We accordingly heard arguments on the general question whether a hospital can be said to be an industry falling within the Industrial Disputes Act and under what circumstances. We also heard arguments on the merits of the appeals to determine whether the decisions rendered therein could be upheld even if the *Hospital Mazdoor Sabha*(1) case was held applicable. We shall follow the same course here. We shall first consider the general proposition whether a hospital can be considered to fall within the concept of industry in the Industrial Disputes Act and whether all hospitals of whatever description can be covered by the concept or only some hospitals under special conditions. We shall then consider the merits of the individual cases in so far as may be necessary. E F G

The Industrial Disputes Act was construed in the past on more than one occasion by this Court. A fairly comprehensive summary of the various cases with the *rationes decidendi* of those H

(1) [1960] 2 S.C.R. 866. (2) [1968] 1 S.C.R. 742.

A cases is to be found in the *Gymkhana Club*(1) case. The tests applied to find out whether a particular establishment falls within the definition of 'industry' or not were not found to be uniform and disclosed a pragmatic approach to the problem. This Court, therefore, in *Gymkhana Club*(1) case fell back upon the statute for guidance pointing out that they were not concerned with a B popular phrase but one which the statute had with great particularity defined itself. Examining the content of the definitions this Court came to certain conclusions and held in their light that a non-proprietary members' club was not an industry.

The reasoning in the *Gymkhana Club*(1) case formed the basis of an attack on the former ruling in the *Hospital Mazdoor* C *Sabha*(2) case by the Managements of the three Hospitals which are appellants here. The other side relied upon the ruling and the amendment of the Industrial Disputes Act by which 'Service in hospitals and dispensaries' has now been added as item No. 9 in the First Schedule, as one of the industries which may be declared to be public utility services under sub-cl. (vi) of cl. (n) D of s. 2 of the Act. It is claimed that this is a legislative determination of the question whether hospital is an industry or not. It has, therefore, become necessary to cover some of the ground covered in the *Gymkhana Club*(1) case. To begin with we may once again refer to the relevant definitions contained in the Act for they must necessarily control our discussion.

E The Industrial Disputes Act, as its title and indeed its whole tenor disclose, was passed to make provision for the investigation and settlement of industrial disputes and for certain other purposes appearing in the Act. The term 'industrial dispute' is defined by s. 2(k) in the following words :

F > " 'industrial dispute' means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."

G The definition discloses that disputes of particular kinds alone are regarded as industrial disputes. It may be noticed that this definition does not refer to an industry. But the dispute, on the grammar of the expression itself, means a dispute in an industry and we must, therefore, turn to the definition of 'industry' in the Act. The word is defined in cl. (j) and reads :

H > " 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any

(1) [1968] 1 S.C.R. 742. (2) [1960] 2 S.C.R. 866.

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> calling, services, employment, handicraft, or industrial occupation or avocation of workman."

This definition is in two parts. The first part says that it *means* any business, trade, undertaking, manufacture or calling of employers and then goes on to say that it includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen. B

In dealing with this definition this Court in the *Gymkhana Club* case(1) attempted to keep the two notions concerning employers and employees apart and gave the opinion that the denotation of the term 'industry' is to be found in the first part relating to employers and the full connotation of the term is intended to include the second part relating to workmen. It was, therefore, concluded: C

> "If the activity can be described as an industry with reference to the occupation of the employers, the ambit of the industry, under the force of the second part, takes in the different kinds of activity of the employees mentioned in the second part. But the second part standing alone cannot define 'industry'.....By the inclusive part of the definition the labour force employed in an industry is made an integral part of the industry for purposes of industrial disputes although industry is ordinarily something which employers create or undertake." D E

These observations need to be somewhat qualified. It is to be noticed that this definition modifies somewhat the definition of 'industry' in s. 4 of the Commonwealth Conciliation and Arbitration Act 1909-1970) (Acts Nos. 13 of 1904 and 7 of 1910) of Australia where the definition reads :

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> " 'industry' means business, trade, manufacture, undertaking, calling, service or employment, on land or water, in which persons are employed for pay, hire, advantage or reward, excepting only persons engaged in agricultural, viticultural, horticultural, or dairying pursuits."

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Although the two definitions are worded differently the purport of both is the same. It is not necessary to view our definition in two parts. The definition read as a whole denotes a collective enterprise in which employers and employees are associated. It does not exist either by employers alone or by employees alone. It exists only when there is a relationship between employers and employees, the former engaged in business, trade, undertaking, manufacture or calling of employers and the latter engaged in any calling, service, H

(1) [1958] 1 S.C.R. 742.

A employment, handicraft or industrial occupation or avocation. There must, therefore, be an enterprise in which the employers follow their avocations as detailed in the definition and employ workmen who follow one of the avocations detailed for workmen. The definition no doubt seeks to define 'industry' with reference to employers' occupation but includes the employees, for without the B two there can be no industry. An industry is only to be found when there are employers and employees, the former relying upon the services of the latter to fulfil their own occupations.

But every case of employment is not necessarily productive of an industry. Domestic employment, administrative services of public officials, service in aid of occupations of professional men, C also disclose relationship of employers and employees but they cannot be regarded as in the course of industry. This follows from the definition of 'workman' in the Act defined in cl.(s) which reads :

> " 'workman' means any person (including an apprentice) employed in any industry to do any skilled or D unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge E or retrenchment has led to that dispute, but does not include any such person—
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> (i) who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy (Discipline) Act, 1934; or
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> F (ii) who is employed in the police service, or as an officer or other employee of a prison; or
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> (iii) who is employed mainly in a managerial or administrative capacity; or
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> (iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per G mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

The word 'industry' in this definition must take its colour from the H definition and discloses that a workman is to be regarded as one employed in an industry if he is following one of the vocations mentioned in conjunction with his employers engaged in the vocations mentioned in relation to the employers.

Therefore an industry is to be found when the employers are carrying on any business, trade, undertaking, manufacture or calling of employers. If they are not, there is no industry as such. What is meant by these expressions was discussed in a large number of cases which have been considered elaborately in the *Gymkhana Club*(1) case. The conclusion in that case may be stated :

> "Primarily, therefore, industrial disputes occur when the operation undertaken rests upon cooperation between employers and employees with a view to production and distribution of material goods, in other words, wealth, but they may arise also in cases where the cooperation is to produce material services. The normal cases are those in which the production or distribution is of material goods or wealth and they will fall within the expressions trade, business and manufacture."

The words 'trade', 'business', 'manufacture' and 'calling' were next explained thus :

> "The word 'trade' in this context bears the meaning which may be taken from Halsbury's Laws of England, Third Edn. Vol. 38 p. 8—
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> (a) exchange of goods for goods or goods for money;
>
> (b) any business carried on with a view to profit, whether manual, or mercantile, as distinguished from the liberal arts or learned professions and from agriculture; and business means an enterprise which is an occupation as distinguished from pleasure. Manufacture is a kind of productive industry in which the making of articles or material (often on a large scale) is by physical labour or mechanical power. Calling denotes the following of a profession or trade."

It may be added here that in *National Association of Local Government Officers* v. *Bolton Corporations*(2) at page 183 et seq Lord Wright observes that 'trade' is a term of the widest scope. This is true. We speak of the occupation of men in buying and selling, barter or commerce as trade. We even speak of work, especially of skilled work as a trade, e.g. the trade of goldsmiths. But the word as used in the statute must be distinguished from professions although even professions have 'trade unions'. The word 'trade' includes persons in a line of business in which persons are employed as workmen. Business too is a word of wide import. In one sense it includes all occupations and professions. But in the collocation of the terms and their definitions these terms have a definite economic content of a particular type and on the

(1) [1968] 1 S.C.R. 742. (2) [1943] A.C. 166, 183.

A authorities of this Court have been uniformly accepted as excluding professions and are only concerned with the production, distribution and consumption of wealth and the production and availability of material services. Industry has thus been accepted to mean only trade and business, manufacture, or undertaking analogous to trade or business for the production of material goods
B or wealth and material services.

Why professions must be held outside the ambit of industry may be explained. A profession ordinarily is an occupation requiring intellectual skill, often coupled with manual skill. Thus a teacher uses purely intellectual skill while a painter uses both. In any event, they are not engaged in an occupation in which em-
C ployers and employees co-operate in the production or sale of commodities or arrangement for their production or sale or distribution and their services cannot be described as material services.

What is meant by 'material services' needs some explanation too. Material services are not services which depend wholly or
D largely upon the contribution of professional knowledge, skill or dexterity for the production of a result. Such services being given individually and by individuals are services no doubt but not material services. Even an establishment where many such operate cannot be said to convert their professional services into material services. Material services involve an activity carried on
E through co-operation between employers and employees to provide the community with the use of something such as electric power, water, transportation, mail delivery, telephones and the like. In providing these services there may be employment of trained men and even professional men, but the emphasis is not on what these men do but upon the productivity of a service organised
F as an industry and commercially valuable. Thus the services of professional men involving benefit to individuals according to their needs, such as doctors, teachers, lawyers, solicitors etc. are easily distinguishable from an activity such as transport service. The latter is of a commercial character in which something is brought into existence quite apart from the benefit to particular individuals. It is the production of this something which is described
G as the production of material services.

Mr. Ramamurti arguing against the Hospitals drew our attention to Citrine's book 'Trade Union Law' (3rd edn. p. 609) where the author observes :

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> "However, whilst the words 'trade' and 'industry' are separately capable of a wide interpretation, when they occur in conjunction the tendency of the courts is to give them a narrow one."

He cites the House of Lords case to which we have referred and criticises the tendency of the court to narrow the meaning of the expressions 'industry' and 'workman'. He says that this narrow interpretation unnecessarily excludes from workmen 'teachers employed by local authorities, university employees, nurses and others employed under the National Health Service, the domestic staff of the Houses of Parliament and Civil Servants who are not employed in 'trading' or 'industrial undertaking'. He includes all these in the definitions because a person doing the same type of work for a commercial undertaking is within the definition. According to him any person gainfully employed must be within the definition. On the strength of this definition Mr. Ramamurthi also contends that not the *Hospital Mazdoor Sabha*(1) case but the earlier cases of this Court such as *University of Delhi and Anr.* v. *Ramnath*(2) and *National Union of Commercial Employees* v. *M. R. Meher*(3) must be reconsidered and overruled.

The reason for these cases, as also the *Gymkhana Club*(4) case lies in the kind of establishment with which we are concerned. The *Gymkhana Club*(4) case of this Court (followed and applied in *Cricket Club* v. *Labour Union*(5) has held that non-profit making members' clubs are not employed in trade or industry and their employees are not entitled to engage in trade disputes with the clubs. This view finds support from *Hotel and Catering Industry Training Board and Automobile Proprietary Ltd.*(6). The Solicitors case cited by Mr. Ramamurti was so decided because there the services rendered by the employees were in aid of professional men and not productive of material goods or wealth or material services. The other case of University was also decided, as it was, for the same reason.

It, therefore, follows that before an industrial dispute can be raised between employers and their employees or between employers and employers or between employees and employees in relation to the employment or non-employment or the terms of employment or with the conditions of labour of any person, there must be first established a relationship of employers and employees associating together, the former following a trade, business, manufacture, undertaking or calling of employers in the production of material goods and material services and the latter following any calling, service, employment, handicraft, or industrial occupation or avocation of workmen in aid of the employers' enterprise. It is not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in a commercial sense.

(1) [1960] 2 S.C.R. 866. (2) [1964] 2 S.C.R. 703.
(3) [1962] Supp. 3 S.C.R. 157. (4) [1968] 1 S.C.R. 742.
(5) A.I.R. 1969 S.C.R. 276.
(6) (1969) 1 W.L.R. 697 H.L. S.C.; (1968) 1 W.L.R. 1526 and [1968] 3 All. E.R 399 C.A.

A We do not find it necessary to refer to the earlier cases of this Court from which these propositions have been deduced because they are all considered in the *Gymkhana Club* case(1). We accept the conclusion in that case that :

> ".....before the work engaged in can be described as an industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking resulting in material goods or material services."

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We may now consider closely the *Hospital Mazdoor Sabha*(2) case and the reasons for which it was held that the workmen employed in a hospital were entitled to raise an industrial dispute. We may say at once that if a hospital, nursing home or dispensary is run as a business in a commercial way there may be found elements of an industry there. Then the hospital is more than a place where persons can get treated for their ailment. It becomes a business.

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D In the *Hospital Mazdoor Sabha*(2) case, hospitals run by Government and even by a private association, not on commercial lines but on charitable lines or as part of the functions of Government Department of Health were held included in the definition of industry. The reason given was that the second part of the definition of industry contained an extension of the first part by including other items of industry. As we have pointed out the first and the second parts of the definition are not to be read in isolation as if they were different industries but only as aspects of the occupation of employers and employees in an industry. They are two counterparts in one industry. The case proceeds on the assumption that there need not be an economic activity since employment of capital and profit motive were considered unessential.

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F It is an erroneous assumption that an economic activity must be related to capital and profit-making alone. An economic activity can exist without the presence of both. Having rejected the true test applied in other cases before, the test applied was 'can such activity be carried on by private individuals or group of individuals' ? Holding that a hospital could be run as a business proposition and for profit, it was held that a hospital run by Government without profit must bear the same character. With respect, we do not consider this to be the right test. That test was employed to distinguish between the administrative functions of Government and local authorities and their functions analogous to business but it cannot be used in this context. When it was emphasised in the same case that the activity must be analogous to business and trade and that it must be productive of goods or their distribution or for producing material services to the community at large

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(1) [1968] 1 S.C.R. 742. (2) [1960] 2 S.C.R. 866.

or a part of it, there was no room for the other proposition that privately run hospitals may in certain circumstances be regarded as industries. The expression 'satisfying material human needs' was evolved which bore a different meaning. These observations were apparently based on the observations of Isaacs and Rich JJ. in *Federated Municipal and Shire Council Employees of Australia* v. *Melbourne Corporation*(1), but they were :

> "Industrial disputes occur when, in relation to operations in which capital and labour are contributed in co-operation for the satisfaction of human wants and desires, those engaged in co-operation dispute as to the basis to be observed, by the parties engaged, respecting either a share of the produce or any other terms and conditions of their co-operation.... The question of profit making may be important from an income-tax point of view, as in many municipal cases in England; but, from an industrial dispute point of view, it cannot matter whether the expenditure is met by fares from passengers or from rates."

The observations in the Australian case only indicate that in those activities in which government takes to industrial ventures, the notion of profit-making and the absence of capital in the true sense of the word are irrelevant. The passage itself shows that industrial disputes occur in operation in which employers and employees associate to provide what people want and desire in other words where there is production of material goods or material services. In our judgment the *Hospital Mazdoor Sabha*(2) case took an extreme view of the matter which was not justified.

It is argued that after the amendment of the Industrial Disputes Act by which 'service in hospitals and dispensaries' is included in public utility services, there is no scope for saying that hospitals are not industries. It is said that Parliament has accepted that the definition is suited to include a hospital. This contention requires close attention in view of the fact that it was noticed in the *Hospital Mazdoor Sabha*(2) case although that arose before the amendment.

A public utility service is defined in the Act by merely naming certain services. It will be noticed that these services are :

> (i) any railway service or any transport service for the carriage of passengers or goods by air;

(1) 26 C.L.R. 508. (2) [1960] 2 S.C.R. 866.

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(ii) any section of any industrial establishment on the working of which the safety of the establishment or the workmen employed therein depends;

(iii) any postal, telegraph or telephone service;

(iv) any industry which supplies power, light or
B water to the public;

(v) any system of public conservancy or sanitation;

After naming these services the definition adds :

(vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that
C public emergency or public interest so requires, by notification in the official gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification.

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like
D notification, be extended from time to time, by any period not exceeding six months, at any one time if in the opinion of the appropriate Government public emergency or public interest requires such extension.

The intention behind this provision is obviously to cassify
E certain services as public utility services with special protection for the continuance of those services. The named services in the definition answer the test of an industry run on commercial lines to produce something which the community can use. These are brought into existence in a commercial way and are analogous to business in which material goods are produced and distributed for consumption.

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When Parliament added the sixth clause under which other services could be brought within the protection afforded by the Act to public utility services, it did not intend that the entire concept of industry in the Act, could be ignored and anything brought in. Therefore it said that an industry could be declared to be a public utility service. But what could be so declared had to be
G an industry in the first place. We are concerned with the addition of item 9 'service in hospitals and dispensaries'. The heading of the First Schedule speaks again of industries which may be declared to be public utility services. The original entries were five and they read :

1. Transport (other than railways) for the carriage of
H passengers or goods, by land, water or air (now air is omitted).

2. Coal

3. Cotton textiles.

4. Food stuffs

5. Iron and steel.

It is obvious that general headings are given here. Coal is not an industry but certain aspects of dealing with coal is an industry and that is what is intended. That dealing must be in an industry in which there are employers and employees cooperating in the production of material goods or material services. Similarly, cotton, textiles or food stuffs or iron and steel, as the entries stand, are not industries. Therefore the heading of the First Schedule and the words of clause (vi) presuppose the existence of an industry which may be notified as a public utility service, for special protection under the Act.

Therefore when the list was expanded in the First Schedule and certain services were mentioned, the intention could not be otherwise. The list was extended to 10 items by amendment of the Act by Act 36 of 1956 with effect from March 10, 1957. The new items are (a) Banking, (b) Cement, (c) Defence Establishments, (d) Service in hospitals and dispensaries, and (e) Fire Brigade Service. Later by notifications issued under s. 40 of the Act nine more items were added. Section 40 gives to governments the power to add to the Schedule. They are (a) Indian Government Mints, (b) India Security Press, (c) Copper Mining, (d) Lead Mining, (e) Zinc Mining, (f) Iron ore mining, (g) Service in any oil field, (h) Any service in, or in connection with, the working of any major port or dock and (i) Service in the Uranium Industry. It is easy to see that most of them are items in which an industry proper involving trade, business, manufacture or something analogous to business can be found. It is hardly to be thought that notifications can issue in respect of enterprises which are not industries to start with. It is only industries which may be declared to be public utility services.

Therefore to apply the notification, the condition precedent of the existence of an industry has to be satisfied. If there is an industry which falls within the items named in the First Schedule, then alone can it be notified to be classed as a public utility service. The law does not work the other way round that every activity connected with coal becomes an industry and therefore on notification that activity becomes a public utility service. The same is true of all items including all the services mentioned. They must first be demonstrated to be industries and then the notification will apply to them. To hold otherwise would largely render useless all the definitions in the Act regarding industry, industrial disputes etc., in relation to the scheduled items. Parliament has not attempted to declare that notwithstanding the definitions of

A 'industry', 'industrial disputes', 'workman' and 'employer', every hospital is to be regarded as an industry. All that has been provided is that an 'industry' may be notified as a public utility service. That is insufficient to convert non-industries under the Act to industries.

B We now take up the individual cases.

C.A. No. 1705 *of* 1969.

It is obvious that Safdarjung Hospital is not embarked on an economic activity which can be said to be analogous to trade or business. There is no evidence that it is more than a place where
C persons can get treated. This is a part of the functions of Government and the Hospital is run as a Department of Government. It cannot, therefore, be said to be an industry.

In this case the petitioner chose to be a Lower Division Clerk. The amount of security which he had to furnish in the job of a Store-keeper was also refunded to him. He had applied for the
D post on May 31, 1962. On July 14, 1962 he again drew attention to his application. His application was recommended on August 9, 1962. It was only after November 26, 1962 when the scale of Store-keepers was raised to Rs. 130-300 that he changed his views. On December 12, 1962 he made a representation but in forwarding it the Medical Superintendent said that the incumbents of the posts of Store-keepers could not be given the upgrad-
E ed scale of Rs. 130-300. In addition there were certain matters pending against him which precluded his appointment in that scale. On August 11, 1966 the Director General wrote :

> "With reference to your letter No. 1-20/62-Estt., dated the 4th Jan. 1966 and subsequent reminder of even number dated the 24th May, 1966 on the subject noted
F above, I am directed to say that a reference was made to the Government of India in the Ministry of Health and Family Planning, New Delhi who have stated that it was not intended that the revised scale of Rs. 110-131 (previous scale of Rs. 60-75) should be further revised to Rs. 130-300 as all incumbents of the posts carrying the
G pay scale of Rs. 110-131 were promoted from Class IV and did not possess the requisite qualifications prescribed for posts carrying pay scale of Rs. 130-300.
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> In view of the position stated above further action in the matter may kindly be taken in the light of the above remarks and storekeepers concerned informed accord-
H ingly."

In view of these facts it is hardly necessary to refer to the reports about the work of Kuldip Singh Sethi and other matters which

came in his way of promotion. Both on the question of law decided by us and on the merits of his case, Kuldip Singh Sethi was not entitled to the pay scale of store-keepers and the award of Rs. 914/- in his favour was wrong. The appeal is allowed. The order is set aside but there will be no order about costs. A

C.A. No. 1781 *of* 1969. B

The Tuberculosis Hospital is not an independent institution. It is a part of the Tuberculosis Association of India. The hospital is wholly charitable and is a research institute. The dominant purpose of the Hospital is research and training, but as research and training cannot be given without beds in a hospital, the hospital is run. Treatment is thus a part of research and training. In these C circumstances, the Tuberculosis Hospital cannot be described as an industry. The order of the Additional Industrial Tribunal, Delhi on the preliminary point must be reversed. The reference to the Tribunal under s. 10(1)(d) of the Industrial Disputes Act was incompetent. The appeal is allowed but we make no order about costs. D

C.A. No. 1777 *of* 1969.

The objects of the Kurji Holy Family Hospital are entirely charitable. It carries on work of training, research and treatment. Its income is mostly from donations and distribution of surplus as profit is prohibited. It is, therefore, clear that it is not an indus- E try as laid down in the Act. The reference made by the State Government, Bihar was thus incompetent. The appeal will be allowed. There will be no order about costs, except in the first case (C.A. 1705 of 1967) in which the earlier order of this Court shall be given effect to.

V.P.S. *Appeals allowed.*