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be paid in respect of appeals and applications made under this Act, the documents which shall accompany such appeals and applications and the period within which applications shall be filed".

The petition under section 42 of the Act is no doubt an application under the Act. The above-quoted clause in sub-section (2) of section 46 specifically authorises the State Government to make a rule prescribing the period within which such an application can be filed. I, therefore, hold that rule 18 is *intra vires* of section 46(2)(ff) of the Act and must, therefore, be enforced.

I, accordingly, allow this writ petition and set aside the impugned order of the Additional Director dated July 29, 1963. This would not, however, mean that the application of respondent No. 2 under section 42 of the Act has been dismissed by me, as a result of the quashing of the impugned order. The application of respondent No. 2 shall be deemed to be pending before the State Government and will now be heard and disposed of in accordance with law. If the second respondent is able to convince the competent authority of his having been prevented by sufficient cause for not approaching the State Government under section 42 of the Act before the 28th November, 1962, it would certainly be open to the appropriate authorities to admit, entertain and decide the second respondent's application on merits in accordance with law.

In the circumstances of the case, there will be no order as to costs in this Court.

B.R.T.

CIVIL MISCELLANEOUS

Before S. K. Kapur, J.

THE MANAGEMENT OF BAR ASSOCIATION CANTEEN,—

Petitioner

versus

THE CHIEF COMMISSIONER AND OTHERS,—*Respondents*

Civil Writ No. 1767-C of 1965

1966

January 28th.

Industrial Disputes Act (XIV of 1947)—S. 2(J)—Delhi District Courts Bar Association Canteen run on 'no profit no loss' basis—Whether 'industry'—Particular establishment—Whether an industry—How to be determined—Interpretation of Statutes—Rules of construction if literal meaning results in absurdity stated.

Held, that the Delhi District Bar Association Canteen is not an 'industry' within the meaning of section 2(J) of the Industrial Disputes Act,1947. The overall activities of the Bar Association must be taken into consideration, as otherwise a serious disparity will arise between emlpoyees working under the same precincts and under the same management. The Bar Association, in carrying on its canteen, cannot be said to engage in the production or distribution of goods or the rendering of the material service to the community at large with the help of its employees in an industrial sense. Having regard to the basic object of the Act, it appears that the legislature visualised an industrial dispute to arise in relation to operations in which capital and labour are contributed in co-operation for the satisfaction of human wants. The activities of the members of the Bar Association, namely, rendering advice to the clients and appearing for them in cases, are certainly not an 'industry'. Extending it a little further, if the Bar Association employs workmen for supplying drinking water or assisting the members in taking out books from the book-racks, the dispute between such workmen and the Bar Association would not be an 'industrial dispute'. If this activity is extended a little more and the members employ persons to prepare snacks for them to be served during Court hours on working days, it would not become an 'industry'. The fact that the guests of the members are also served snacks and refreshments would also make no difference as the Canteen is primarily for the members and the activity in serving the food or snacks to the guests would be merely incidental.

Held, that it is known rule of interpretation that when construing a statute the object of the Act must be kept in view and some limitations imposed on its amplitude to give effect to the intention of the legislature if the literal meaning results in absurdity. It is difficult to accept that the legislature intended that all services and all callings should fall within the purview of the definition. Some limitations are also implicit from the definition of the words 'industrial dispute' in section 2(k), 'emloyer' in section 2(g) and 'workman' in section 2(s). It is useless to multiply authorities because each case has to be decided on its peculiar facts and circumstances. The endeavour of the Courts has to be directed to finding out as to where a line has to be drawn, and then decide whether on the facts of a given case it falls on this side or that side of the border. Broadly, the tests deducible from the Supreme Court judgments are that where the activity carried on by the institution is for the production or distribution of goods or for the rendering of material service to the community at large with the help of employees or the activity is such as can only be carried on with the co-operation of the employer and the employee and its object is the satisfaction of material human needs and it is organised and arranged in a manner in which trade or business is generally organised or arranged, it

would be an 'industry'. In short, there must exist a partnership between labour and capital and the industrial product should be the result of that co-operation and partnership. True, that the definition of 'industry' is very wide and includes an undertaking and calling, but all human endeavour, though 'industry' in the literary sense is not 'industry' in the industrial sense. The words "undertaking" and "calling" in the context of the statutory definition bear an industrial connotation.

Petition under Articles 226/227 of the Constitution of India, praying that this petition may kindly be accepted and the order of respondent No. 3 be quashed and the respondents be directed by means of a writ in the nature of prohibition and/or certiorari or any other appropriate writ order or direction, to stop the proceedings against the petitioner, as the petitioner is not an 'industry' within the meaning of section 2(J) of the Industrial Disputes Act and as such, exempt from the provisions of the said Act and any such other or further relief, order or direction may also be passed in favour of the petitioner or any such other writ, order or direction may also be issued against the respondent as may appear to your Lordships to be just, fit and proper in the circumstances of the case.

R. L. AGGARWAL WITH H. S. DHIR, ADVOCATES, for the Petitioner.

MADAN MOHAN AND G. D. GUPTA, ADVOCATES, for the Respondents.

ORDER

Kapur, J.

KAPUR, J.—The management of the Bar Association Canteen has filed this writ petition impugning the decision of the Additional Industrial Tribunal, Delhi, dated 19th May, 1965, on the following two preliminary issues:—

(1) Whether the canteen is an 'industry' within the meaning of section 2(j) of the Industrial Disputes Act? and

(2) Whether the sponsoring Union has any *locus standi* to raise the dispute?

It is alleged in the writ petition that the District Courts Bar Association, Delhi, has a membership of over 1,300 persons, who are practising as lawyers within the jurisdiction of the District Courts at Delhi, that it was felt by the said Bar Association that some arrangement for provision of beverages, snacks and food to the members

should be made and a resolution was passed in 1952 for setting up a canteen for providing snacks and beverages during lunch hours to the members of the Association. A small portion in the verandah was allotted for this purpose to the Bar Association in the Hindu College building at Delhi where the canteen was started on 'no-profit no-loss' basis for the exclusive use by the members of the District Bar Association; that as a result of certain representations made on behalf of the Association a Bar Room and a room for canteen was constructed in one block in the eastern wing in the New Courts building at Tis Hazari; that about April, 1958, the Bar Association, as usual, started its canteen on 'no-profit no-loss' basis for the use of the members of the Bar exclusively; that the right of admission to the canteen was reserved exclusively to the members of the Bar, that the canteen is being managed by the Canteen Sub-Committee appointed by the Executive Committee of the District Courts Bar Association, Delhi; that the said canteen is run in a portion of the premises allotted to the Bar Association by the Government free of rent, without any charges for electricity or water and that the canteen has been started for the benefit of the members of the Bar Association, majority of whom come from long distances after taking only tea or light breakfast. It is further stated in the writ petition that the Bar Association provides various facilities to the members, such as cold drinking water in summer, boiled drinking water in rainy season, telephone and library facilities out of the monthly subscription paid by the members, and all the expenses of the Bar Association including the canteen are being met by subscription from the members and the sale of articles in the canteen is on 'no-profit no-loss' basis.

Certain disputes between the workmen and the petitioner relating to the claim for bonus, pay-scales, gratuity, festival holidays and winter uniform were referred by the Chief Commissioner, Delhi, to the Additional Industrial Tribunal for adjudication. The Additional Industrial Tribunal formulated the abovementioned two preliminary issues. The claim made in the writ petition has been refuted in the reply affidavit filed by Shri Ramesh Chander Sharma. Broadly, the position taken up in the reply affidavit is that the canteen is not intended exclusively for the members of the Bar Association; that the canteen caters

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to the needs of the members of the Bar, their relatives, friends and clients whose number is quite high; that the canteen is not run on 'no-profit no-loss' basis; and that the canteen is an 'industry' within the meaning of section 2(j) of the Industrial Disputes Act. The Additional Industrial Tribunal decided in favour of respondent No. 4, that is the Hotel Workers' Union, on both the above-said preliminary issues. For completeness, it would be appropriate to sum up the various findings of the Additional Tribunal. They are:—

(1) Though the establishments of Legal Practitioners have been exempted from the operation of the Delhi Shops and Establishments Act, it is difficult to treat the canteen, which is registered as a shop under the said Act, as such an establishment, because it does not help in any legal work but only supplies a human want;

(2) If an activity like the canteen in question had been run by an individual, it would certainly be an 'industry' and there is no reason to exclude it from the definition only because it is carried on by the Bar Association; and

(3) whether an undertaking is conducted for profit or not is immaterial.

The heart of the entire problem, therefore, is as to whether or not, having regard to the findings arrived at by the Additional Industrial Tribunal and to the pleadings the canteen can be termed as an 'industry' within the meaning of section 2(j) of the Industrial Disputes Act. The said section defines 'industry' to mean 'any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen'. When the definition is looked at in isolation, it does appear that the canteen would fall within its scope and ambit. The question is not free from difficulty. There is no direct decided case on the point. The decisions have to be looked at only to find out the treatment accorded to particular set of facts. Tests have been laid down by their Lordships of the Supreme Court in some cases for determining such

an issue. In *State of Bombay* v. *Hospital Mazdoor Sabha* (1), the dispute revolved round the consideration of the question whether J. J. Group of Hospitals was an 'industry'. Their Lordships of the Supreme Court answered the question in affirmative. The test laid down by the Supreme Court was in the following words:—

> "We have yet to decide which are the attributes the presence of which makes an activity an undertaking within section 2(j), on the ground that it is analogous to trade or business. It is difficult to state these possible attributes definitely or exhaustively; 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 services 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 organized or arranged, the condition of the co-operation between 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(j) applies. Judged by this test, there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of hospitals in question."

The Supreme Court turned down the contention that in the absence of profit motive an activity should be excluded from section 2(j) and held that in deciding this question the doctrine of *quid pro quo* can have no application. In

(1) (1960)1 L.L.J. 251.

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University of Delhi v. *Ram Nath* (2), it was held that reading the definitions of employer, industry and workman in sections 2(g), 2(j) and 2(s) of the said Act, it would be legitimate to hold that the work of education carried on by educational institutions like the University of Delhi is not an 'Industry' within the meaning of this Act. It was observed that "It is true that like all educational institutions the University of Delhi employs subordinate staff and this subordinate staff does the work assigned to it; but in the main scheme of imparting education, this subordinate staff plays such a minor, subordinate and insignificant part that it would be unreasonable to allow this work to lend its industrial colour to the principal activity of the university which is imparting education. The work of promoting education is carried on by the university and its teachers and if the teachers are excluded from the purview of the Act, it would be unreasonable to regard the work of imparting education as industry only because its minor, subsidiary and incidental work may seem to partake of the character of service which may fall under section 2(j)." The case of *Ahmedabad Textiles Industry's Research Associations* v. *State of Bombay* (3), in which their Lordships of the Supreme Court held that Ahmedabad Textile Industry's Research Association carried on an activity which fell within the definition was distinguished on the ground that in that case it had been emphasised that its work was distinct and separate from the work of an institution which carries on purely educational activities. Again, in *National Union of Commercial Employees* v. *Meher* (*Industrial Tribunal, Bombay*) (4), their Lordships of the Supreme Court held that the employees of a solicitor in his office were not workmen of an 'industry' because the profession of a solicitor could not be equated to an industry or trade or an undertaking. It is also apt to quote the observations of the Supreme Court in the *Hospital Mazdoor Sabha's case* wherein the Supreme Court recognised the principle that notwithstanding the wide language used in section 2(j) a line would have to be drawn in a fair and just manner so as to exclude some callings, services, undertakings from its purview having

(2) (1963)2 L.L.J. 335.
(3) (1960)2 L.L.J. 720.
(4) (1962)1 L.L.J. 241.

regard to the scope, object and purpose of the Act. It was said that "though section 2(j) uses words 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 all 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."

It is a known rule of interpretation that when construing a statute the object of the Act must be kept in view and some limitations imposed on its amplitude to give effect to the intention of the legislature if the literal meaning results in absurdity. It is difficult to accept that the legislature intended that all services and all callings should fall within the purview of the difinition. Some limitations are also implicit from the definition of the words 'industrial dispute' in section 2(k), 'employer' in section 2(g) and 'workman' in section 2(s). It is useless to multiply authorities because each case has to be decided on its peculiar facts and circumstances. The endeavour of the Courts has to be directed to finding out as to where a line has to be drawn, and then decide whether on the facts of a given case it falls on this side or that side of the border. Broadly, the tests deducible from the Supreme Court judgments are that where the activity carried on by the institution is for the production or distribution of goods or for the rendering of material service to the community at large with the help of employees or the activity is such as can only be carried on with the co-operation of the employer and the employee and its object is the satisfaction of material human needs and it is organised and arranged in a manner in which trade or business is generally organised or arranged, it would be an 'industry'. In short, there must exist a partnership between labour and capital and the industrial product should be the result of that co-operation and partnership. True, that the definition of 'industry' is very wide and includes an undertaking and calling, but all human endeavour, though 'industry' in the literary sense is not 'industry' in the industrial

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sense. The words "undertaking" and "calling" in the context of the statutory definition bear an industrial connotation. The overall activities of the Bar Association must be taken into consideration, as otherwise a serious disparity will arise between employees working under the same management. Applying these tests, I think, it cannot be held that the Bar Association, in carrying on its canteen, is engaged in the production or distribution of goods or the rendering of the material service to the community at large with the help of its employees in an industrial sense. Having regard to the basic object of the Act, it appears that the legislature visualised an industrial dispute to arise in relation to operations in which capital and labour are contributed in co-operation for the satisfaction of human wants. The activities of the members of the Bar Association, namely, rendering advice to the clients and appearing for them in cases, are certainly not an 'industry'. Extending it a little further, if the Bar Association empolys workmen for supplying drinking water or assisting the members in taking out books from the book-racks, the dispute between such workmen and the Bar Association would not be an 'industrial dispute'. The question is: if this activity is extended a little more and the members employ persons to prepare snacks for them to be served during Court hours on working days, would it become an 'industry'? To give one example: if two cooks are employed by the Bar Association to find out from the members every day as to what they needed for their lunch and to prepare it, it would be difficult to say that such an activity is organised on the lines on which a trade or business is organised. Merely because a separate room is set apart, where the members can go and eat snacks, it would not constitute it into an 'industry', because it cannot be said that this is an organisation organised on the lines of trade or business and engaged in rendering material service to the community at large with the help of its employees. No doubt, it has been found that guests of the members do go and take snacks in that room, but at the same time it has been held that it is primarily intended for the members. The activity in serving the food or snacks to the guests would be merely incidental. The fact, however, remains that the canteen is not like a hotel or restaurant where members gather for partaking refreshments. The primary object of the canteen is to supply

refreshments to the members and assist them in carrying on their activities. In this view, it must be held that the Additional Industrial Tribunal was wrong in the view it took that the canteen is an 'industry'. It follows that the reference made to the Additional Industrial Tribunal is bad in law and must, therefore, be quashed. The writ petition is, therefore, allowed and the impunged award of the Additional Industrial Tribunal and the reference made under notification No. F. 26(160)/64-Lab, dated the 1st June, 1964, set aside. Parties will, however, bear their own costs.

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FULL BENCH

Before D. Falshaw, C.J., Daya Krishan Mahajan and R. S. Narula, JJ.

GULZARI LAL,—*Appellant*

versus

DEWAND CHAND,—*Respondent*

Regular Second Appeal No. 210 of 1965

1966

March, 16th.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 20 and 29—Auction-purchaser of evacuee property who has not yet obtained sale certificate—Whether can maintain suit for ejectment against a tenant in occupation who has attorned to the auction-purchaser.

Held, that an auction-purchaser of evacuee property who has not yet obtained sale certificate but to whom the occupier has attorned, can, under the ordinary law, maintain a suit for ejectment against the said occupier.

NOTE.—It has been pointed out that there is no conflict between *Roshan Lal Goswami* v. *Gobind Ram and others* (1) *and Attar Lal* v. *M/s Lakhmi Dass and Co.*, Letters Patent *Appeal No.* 139-*D of* 1963, *decided by Dua and*

(1) I.L.R. (1963)2 Punj. 745=1963 P.L.R. 852.