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WORKMEN OF INDIAN STANDARDS INSTITUTION

v.

MANAGEMENT OF INDIAN STANDARDS INSTITUTION

October 6, 1975

B [A. ALAGIRISWAMI, P. N. BHAGWATI AND P. K. GOSWAMI, JJ.]

Industrial Disputes Act, 1947—Sections 2(k), 2(g), 2(j) and 2(s)—"Industrial Dispute"—Concept of 'Industry'—Meaning of—Tests to be satisfied for treating an "activity" as an "Industry" within the meaning of Section 2(j).

Words and Phrases—Term "undertaking" used in the definition in Section 2(g) of the Industrial Disputes Act, 1947—Meaning and scope of.

C *Indian Standards Institution is an undertaking analogous to trade or business and is an "Industry" within the meaning of Section 2(j).*

The workmen of the Indian Standards Institution, a registered society, under the Societies Registration Act, 1860 made certain demands which were not accepted by the management and the dispute arising therefrom was taken in conciliation. Unable to settle it, the Conciliation Officer made a "failure report" to the Lt. Governor, who referred the dispute for adjudication to the Industrial Tribunal u/ss. 10(1)(d) and 12(5) of the Act. Opposing the claim of the D workmen on merits, the management raised before the Tribunal, a preliminary objection that the Institution was not an "Industry" within the meaning of Section 2(j) of the Act and, therefore, the dispute between the management and its workmen was not an "Industrial dispute" as defined in s. 2(k) and the Lt. Governor had no jurisdiction to refer it for adjudication under the provisions of the Act.

The Tribunal applying the five tests laid down by the Supreme Court in E *"Gymkhana Club's* case" and *"The Cricket Club's* case" found that though capital was employed in the Institution, it was not run with a profit motive and so the fifth test was not satisfied. So viewing, the Tribunal held that (a) the Institution was not an "industry", (b) that the reference was outside the power of the Lt. Governor and (c) that its jurisdiction to entertain the reference and adjudicate upon it was ousted.

Allowing the appeal by special leave against the order of the Industrial F Tribunal.

(Alagiriswami, J. dissenting), the Court

HELD : *(Per Bhagwati and P. K. Goswami, JJ.)*

(i) The definition of an "industrial dispute" in s. 2(k) does not in so many words refer to "industry". But on the grammar of the expression itself, an "industrial dispute" must necessarily be a dispute in an industry and moreover G the expressions "employer" and "workman" used in the definition of "industrial dispute" carry the requirement of industry in that definition by virtue of their own definitions in sections 2(g) and 2(s). [143A-B]

(ii) According to the dictionary meaning an "undertaking" means "anything undertaken; any business or work or project which one engages in or attempts: an enterprise". It is a term of very wide connotation. But an "undertaking" to be within the definition in s. 2(j) of the Act must be read subject to a limitation viz., that it must be analogous to trade or business. In order that H an undertaking should be analogous to trade or business, profit motive and capital investment are not essential requisites. There can be such an undertaking without the presence of both or either of these attributes or features. No rigid and doctrinaire approach can be adopted in considering the question

as to what are the attributes or features which make an undertaking analogous to trade or business. Such an approach would fail to measure up to the needs of the growing welfare State which is constantly engaged in undertaking new and varied activities as part of its social welfare policy. The concept of industry, which is intended to be a convenient and effective tool in the hands of industrial adjudication for bringing about industrial peace and harmony, would lose its capacity for adjustment and change. It would be petrified and robbed of its dynamic content. [145-B, D, 146A, C, D]

(iii) An activity can be regarded as an "industry" within the meaning of s. 2(j) only if there is relationship of employer and employees and the former is engaged in "business, trade, undertaking, manufacture or calling of employers" and the latter "in any calling, service employment, handicraft or industrial occupation or avocation". Though "undertaking" is a word of large import and it means anything undertaken or any project or enterprise, in the context in which it occurs, it must be read as meaning an undertaking analogous to trade or business. In order that an activity may be regarded as an undertaking analogous to trade or business, it must be "organised or arranged in a manner in which trade or business is generally organised or arranged". It must not be casual, nor must it be for oneself nor for pleasure. And it must rest on co-operation with a view to production, sale or distribution of material goods or material services. It is entirely irrelevant whether or not there is profit motive or investment of capital in such activity. Even without these two features, an activity can be an undertaking analogous to trade or business. It is also immaterial "that its objects are charitable or it does not make profits or even where profits are made, they are not distributed amongst its members", or that its activity is subsidised by the Government. Again it is not necessary that "the employer must always be a private individual..... The Act, in terms, contemplates cases of industrial disputes, where the Government or a local authority or a public utility service may be the employer. It also makes no difference that the material services rendered by the undertaking are in public interest. The concept of public interest in a modern welfare State, where new social values are fast emerging and old dying out, is indeed so wide and so broad and comprehensive—is its spectrum and range that many activities which admittedly fall within the category of "industry" are clearly designed to subserve public interest. In fact, whenever any industry is carried on by the Government, it would be in public interest, for the Government can act only in public interest. Whether an activity is carried on in public interest or not, can, therefore, never be a criterion for determining its character as an industry. [149D-H, 150A-B]

State of Bombay v. *Hospital Mazdoor Sabha*, [1960] 2 S.C.R. 866; *Management of Safdarjung Hospital* v. *K. S. Sethi* [1971] 1 S.C.R. 177, followed.

Federated Municipal and Shire Council Employees of Australia v. *Melbourne Corporation* 26 C.L.R. 508; *Secretary, Madras Gymkhana Club Employees Union* v. *The Management of the Madras Gymkhana Club* [1968] 1 S.C.R. 742; *National Union of Commercial Employees* v. *M. R. Meher* [1962] Supp. 3 S.C.R. 157; *University of Delhi & Anr.* v. *Ramnath*, [1964] 2 S.C.R. 703; *Cricket Club of India Ltd.* v. *The Bombay Labour Union & Anr.* [1969] 1 S.C.R. 600, discussed.

HELD (*Per Alagiriswami, J.* contra) :

Even when a trade, business, undertaking, manufacture or calling of employers results in production of material goods or rendering of material services, such an undertaking engaged in trade, business, manufacture or calling of employers will *not* be an "industry, if it is run on charitable principles or is run by Government or local body as part of its duty. In other words, whenever an undertaking is engaged in activity which is not done with a view to exploit it in a trading or commercial sense, but for public interest and without any profit motive or in the form of social service or in the form of activity intended to benefit the general public, it will not be an industry.

[161 G-H, 162A]

A HELD FURTHER (*Per Bhagwati and Goswami, JJ.*)

(iv) The activities of the Indian Standards Institution fall within the category of undertaking analogous to trade or business and constitute an "industry" within the meaning of s. 2(j) of the Industrial Disputes Act, 1947. [157-E]

Ahmadabad Textile Industry Research Association v. *The State of Bombay and others,* [1961] 2 S.C.R. 480; *Management of Safdarjung Hospital* v. *K. S. Sethi,* [1971] 1 S.C.R. 177; *Management of F.I.C.C.I.* v. *Its Workmen,* [1972] S.C.R. 353, followed.

Per contra (*Alagiriswami, J.*)

The Institution has no capital, it does not distribute profits and even when it is wound up, the assets would not go to any private individual. It is not run with a profit motive. It is thus not an enterprise analogous to business or trade. In fact, its activity is only a manifestation of Government activity. Instead of itself performing these duties, which the Government itself has to do in the service of the general public. What the Institution does is to render material services. The material service which the Institution renders is really a subsidised service and it is rendered in public interest. It is an institution interested and engaged in service to the public. Its activities do not go to swell the coffers of any body. Applying the tests evolved and applied in the *Gymkhana Club's* case and the *Safdarjung's* case, it is obvious that the institution is not engaged in any industry. The activities of the Indian Standards Institution are not intended to benefit any class of businessmen or to enable them to increase their income. It is a public service institution and, therefore, is not an industry. [162D-F, 163-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1297 of 1970.

Appeal by special leave from the Award dated the 10th October 1969 of the Additional Industrial Tribubal, Delhi in I.D. No.174 of 1968.

M. K. Ramamurthi, K. R. Nagaraja, S. K. Mehta, A. K. Jain and *C. K. Srivastava,* for the Appellant.

A. K. Sen, M. C. Bhandare, Dr. Anand Prakash, P. P. Rao, P. H. Parekh and *Mrs. Sunanda Bhandare,* for Respondent No. 1.

The Judgment of P. N. Bhagwati and P. K. Goswami, JJ. was delivered by Bhagwati, J. A. Alagiriswami, J. gave a dissenting Opinion.

BHAGWATI, J. Here, in this case, once again arises the question as to what is an 'industry' within the meaning of the Industrial Disputes Act 1947. This question has continually baffled and perplexed the Courts in our country. There have been various judicial ventures in this rather volatile area of the law. The Act gives a definition of 'industry' in section 2(j) but this definition is not very vocal and it has defined analysis, so that judicial effort has been ultimately reduced merely to evolving tests by reference to characteristics regarded as essential for constituting an activity as an 'industry'. The decided cases show that these tests have not been uniform; they have been guided more by an empirical rather than a strictly analytical approach. Sometimes these tests have been liberally conceived, sometimes narrowly. The latest exposition is to be found in the judgment of a Bench of six Judges of this Court

in *Sajdarjung Hospital* v. *K. S. Sethi.*(1) But while applying the tests indicated in this decision, it is necessary to remember that the Industrial Disputes Act, 1947 is a legislation intended to bring about peace and harmony between management and labour in an 'industry' so that production does not suffer and at the same time, labour is not exploited and discontented and, therefore, the tests must be so applied as to give the widest possible connotation to the term 'industry'. Whenever a question arises whether a particular concern is an 'industry', the approach must be broad and liberal and not rigid or doctrinaire. We cannot forget that it is a social welfare legislation we are interpreting and we must place such an interpretation as would advance the object and purpose of the legislation and give full meaning and effect to it in the achievement of its avowed social objective. With these prefatory observations, we proceed to state the facts giving rise to the appeal.

The Indian Standards Institution (hereinafter referred to as 'the Institution') is a Society registered under the Societies Registration Act, 1860. The workmen of the Institution represented by the Indian Standards Institution Employees' Union (hereinafter referred to as 'the Union') made certain demands which were not accepted by the management and a dispute accordingly arose between the management and the workmen. The dispute was taken in conciliation but the Conciliation Officer was unable to bring about settlement and he made, what is commonly known as "failure report" to the Lt. Governor of Delhi. The Lt. Governor thereupon, by an order dated 28-9-1968, referred the dispute for adjudication to the Industrial Tribunal under sections 10(1)(d) and 12(5) of the Act. The order of the Lt. Governor set out the demands which were to form the subject-matter of adjudication by the Industrial Tribunal. The Union representing the workmen filed a statement of claim in support of these demands. The management opposed the demands on merits but in addition to the defence on merits, they raised a preliminary objection which, if well founded, would strike at the very root of the jurisdiction of the Industrial Tribunal to entertain the reference. The preliminary objection was that the Institution was not an industry within the meaning of s. 2(j) of the Act and, therefore, the dispute between the management of the Institution and its workmen was not an 'industrial dispute' as defined in sec. 2(k) and the Lt. Governor had no jurisdiction to refer it for adjudication under the provisions of the Act. Issue No. 1 arising out of this preliminary objection was in the following terms : "Is Indian Standards Institute an industry or not", and this issue was directed to be tried as a preliminary issue.

The Industrial Tribunal proceeded to examine the legal position for the purpose of determining when a particular activity can be regarded as an industry within the meaning of s. 2(j) of the Act. It observed that there were five tests laid down by the decisions of this Court in *Madras Gymkhana Club Employees Union* v. *The Management of the Madras Gymkhana Club*(2) and *Cricket Club of India Ltd.* v. *The*

(1) [1971] 1 S. C. R. 177.

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

A *Bombay Labour Union & Anr.*(1) which were required to be satisfied before an activity could be held to be an "industry" and they were as follows :

"1. When the operation undertaken rests upon cooperation between employers and employees with a view to production and distribution of material goods or material
B services;

2. It must bear the definite character of trade or business or manufacture or calling or must be capable of being described as an Undertaking analogous to business or trade resulting in material goods or material services;

C 3. The activity to be considered as an 'industry' must not be casual but must be distinctly systematic;

4. The work for which labour of workmen is required, must be productive and workmen must be following an employment calling, or industrial avocation; and

5. When private individuals are the employers, the indus-
D try is run with capital and with a view to profits. (These two circumstances may not exist when Government or Local Authority enters upon business, trade, manufacture or an undertaking analogous to trade)."

On an application of these tests, the Industrial Tribunal found that the Institution satisfied the first four tests and this indeed was not disputed, but so far as the fifth test was concerned, it was not satisfied since
E capital was undoubtedly employed in the institution but the Institution was not run with a view to profit. The profit motive was ruled out by the objectives of the Institution and as the profit motive was lacking, the Institution could not be held to be an 'industry'. The Industrial Tribunal accordingly, by an order dated 10th October, 1969, held that the reference of the dispute between the management of the Institution and its workmen was outside the power of the Lt. Governor and the
F Industrial Tribunal had no jurisdiction to entertain the reference or to adjudicate upon it. The workmen were obviously aggrieved by this order made by the Industrial Tribunal since it closed the doors of industrial adjudication and left the workmen without any remedy to redress their grievances and hence they preferred the present appeal against the order of the Industrial Tribunal with special leave obtained from this Court.

G The Industrial Disputes Act, 1947, as its long title and preamble show, has been enacted to make provision for investigation and settlement of industrial disputes. It is only an 'industrial dispute' which can be referred for adjudication under ss. 10(1)(d) and 12(5) of the Act. What is a 'industrial dispute' is to be found in s. 2(k) which defines an industrial dispute to mean "any dispute or difference between employers and employers, or between employers and workmen, or be-
H tween workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions

(1) [1969] 1 S. C. R. 600.

of labour, of any person." This definition, of course, does not in so many terms, refer to 'industry'. But, on the grammar of the expression itself, an industrial dispute must necessarily be a dispute in an industry and moreover the expressions 'employer' and 'workman' used in the definition of 'industrial dispute' carry the requirement of 'industry' in that definition by virtue of their own definitions in ss. 2(g) and 2(s). It is, therefore, necessary to examine what is the concept of an 'industry' within the meaning of the Act.

Now, the word 'industry' is defined in s. 2(j) and that section reads :

> " '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;"

This definition is in two parts. The first part says that it means any business, trade, undertaking, manufacture or calling of employers and then it goes on to say in the second part that it includes any calling, service, employment handicraft, or industrial occupation or avocation of workmen. This Court had occasion to consider this definition in the case of *State of Bombay* v. *The Hospital Mazdoor Sabha*(1) where this Court sought to expand the concept of 'industry' by a process of judicial interpretation to meet the changing requirements of modern currents of socio-economic thought. It was pointed out by this Court that "section 2(j) does not define 'industry' in the usual manner by prescribing what it means : the first clause of the definition gives the statutory meaning of 'industry' and the second clause deliberately refers to several other items of industry and brings them in the definition in an inclusive way." But this interpretation of the definition was disapproved by a larger bench of this Court in *Management of Safdarjung Hospital* v. *K. S. Sethi* (supra). We shall immediately proceed to examine that decision, as that is the decision which presently holds the field and must ultimately govern the determination of the present case. But before we do so, we must refer to another decision of this Court which came a little before *Safdarjung Hospital* case (supra). That is the decision in *Secretary, Madras Gymkhana Club Employees Union* v. *Management of the Gymkhana* (supra). While dealing with the definition of 'industry' in this case, it was pointed out by this Court that "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" and it was concluded : "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 purpose of industrial disputes although industry is

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

ordinarily something which employers create or undertake." We may point out that the concept underlying the observation that "industry is ordinarily something which employers create or undertake" is gradually yielding place to the modern concept which regards industry as a joint venture undertaken by employers and workmen—an enterprise which belongs equally to both. But we need not dwell on this any longer, as it is not of immediate concern to us in this case. It is sufficient to point out that the interpretation of the definition of 'industry' given in *Madras Gymkhana* case (supra) struck a slightly different note from what it was understood to mean in the *State of Bombay* v. *Hospital Mazdoor Sabha* case (supra). But again in *Safdarjung Hospital* case (supra) this Court found it necessary to qualify what it had said in the *Madras Gymkhana* case (supra) in regard to the meaning of 'industry' and after referring to the definition of industry in s. 4 of the Commonwealth Conciliation and Arbitration Act, 1909-1970 this Court observed :

> "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, 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. The definition no doubt seeks to define 'industry' with reference to employers' occupation but include the employees, for without the 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."

This Court then proceeded to add that "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, also disclose relationship of employers and employees but they cannot be regarded as in the course of industry". A workman can 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". Thus, a basic requirement of 'industry' is that the employers must be "carrying on any business, trade, undertaking, manufacture or calling of employers. If they are not, there is no industry as such." Now, what these expressions mean has been discussed in a large number of cases decided by this Court. These cases have all been reviewed in the *Madras Gymkhana* case. We are, however, not directly concerned with any of these expressions except 'undertaking', for the case of the workmen is not that the management of the Institution is

carrying on any business, trade, manufacture or calling but it rests on a very limited ground, namely, that the management of the Institution is carrying on an undertaking. It, therefore, becomes necessary to inquire what is the meaning and scope of the term 'undertaking' as used in the definition in s. 2(j).

Now, according to its dictionary meaning as given by Webster, "undertaking" means "anything undertaken; any business, work or project which one engages in or attempts; an enterprise". It is a term of very wide denotation. But all decisions of this Court are agreed that an undertaking to be within the definition in s. 2(j) must be read subject to a limitation, namely, that it must be analogous to trade or business. That was the view expressed in the *Hospital Mazdoor Sabha* case (supra)—vide page 879 of the Report—and the same view was reiterated in the *Safdarjung Hospital* case (supra)—vide page 187 of the Report. But the question is: when can an undertaking be said to be analogous to trade or business: what are the attributes or characteristics which it must possess in common with trade or business in order to be regarded as analogous to trade or business? That is a question which is not very easy to decide, but there are decisions of this Court which afford guidance in dealing with this question.

This Court pointed out in the *Hospital Mazdoor Sabha* case (supra) that in order that an undertaking should be analogous to trade or business, it is not necessary that it should possess the two essential features associated with the conventional notion of trade or business, namely, profit motive and investment of capital. Gajendragadkar, J., (as he then was), speaking on behalf of the Court observed: "It is not disputed that under s. 2(j) an activity can and must be regarded as an industry even though in carrying it out profit motive may be absent. It is also common ground that the absence of investment of any capital would not make a material difference to the applicability of s. 2(j). Thus, two of the important attributes conventionally associated with trade or business are not necessarily predicated in interpreting s. 2(j)". This view was neither overruled nor departed from in the *Safdarjung Hospital* case (supra). On the contrary, the decision in *Safdarjung Hospital* case reaffirmed this view and gave it the seal of approval of a bench of six judges of this Court. This Court speaking through Hidayatullah, C.J., pointed out in that case: "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—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". The learned Chief Justice, after referring to the observations of Isaacs and Rich, JJ., in *Federated Municipal and Shire Council Employees of Australia* v. *Melbourne Corporation*(1) stated that these observations "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". It is, therefore, clear that, according to the decisions of this Court — and on this point the decision in *Safdarjung Hospital* case (supra) does

(1) 26 C.L.R. 508.

not make any departure from that in the *Hospital Mazdoor Sabha* case (supra)—profit motive and capital investment are not essential requisites for an undertaking within the meaning of the definition in s. 2(j). There can be such an undertaking without the presence of both or either of those attributes or features.

What then are the attributes or features which make an undertaking analogous to trade or business so as to attract the applicability of s. 2(j). It is difficult to enumerate these possible attributes or features definitely or exhaustively. Indeed, it would not be prudent to do so. So infinitely varied and many-sided is human activity and with the incredible growth and progress in all branches of knowledge and ever widening areas of experience at all levels, it is becoming so diversified and expanding in so many directions hitherto unthought of, that no rigid and doctrinaire approach can be adopted in considering this question. Such an approach would fail to measure up to the needs of the growing welfare state which is constantly engaged in undertaking new and varied activities as part of its social welfare policy. The concept of industry, which is intended to be a convenient and effective tool in the hands of industrial adjudication for bringing about industrial peace and harmony, would lose its capacity for adjustment and change. It would be petrified and robbed of its dynamic content. The Court should, therefore, as far as possible avoid formulating or adopting generalisations and hesitate to cast the concept of industry in a narrow rigid mould which would not permit of expansion as and when necessity arises. Only some working principles may be evolved which would furnish guidance in determining what are the attributes or characteristics which would ordinarily indicate that an undertaking is analogous to trade or business.

What can fairly be regarded as a sufficiently elastic or flexible working principle for this purpose has been discussed in a number of decisions of this Court, of which we may refer only to three, namely, the *Hospital Mazdoor Sabha* case (supra), *The Madras Gymkhana* case (supra) and the *Safdarjung Hospital* case (supra). Though the language used in these decisions to state the working principle is not uniform and there are minor variations in the formulation according as one aspect is more emphasised than the other, the working principle laid down is basically the same. Gajendragadkar, J., (as he then was) speaking on behalf of the Court in the *Hospital Mazdoor Sabha* case (supra) stated the working principle in these terms :

> "...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 organised 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 s. 2(j) applies." A

It was the same working principle which was pithly expressed by this Court through Hidayatullah, J., (as he then was) in the *Madras Gymkhana* case (supra) where it was stated : "——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". This last proposition taken from the judgment in the *Madras Gymkhana* case (supra) was in so many terms accepted as valid in the *Safdarjung Hospital* case (supra) : *vide* page 189 of the Report. This Court speaking through Hidayatullah, C.J., pointed out in the *Safdarjung Hospital* case (supra) at pages 186 and 187 of the Report : B C

"But in the collocation of the terms and their definitions these 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." D E

What is meant by 'material' services in this context was explained by the learned Chief Justice in these words :

"Material services are not services which depend wholly or 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 through cooperation 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 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 F G H

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> the benefit to particular individuals. It is the production of this something which is described as the production of material services."

The learned Chief Justice then proceeded to explain why professions must be held to be outside the ambit of industry. This is what he said :

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> "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 employers 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
C material services."

It was for this reason, observed the learned Chief Justice, that the establishment of a solicitor was held not to be an industry "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".(1) The learned Chief Justice pointed out that in the
D *University of Delhi & Anr.* v. *Ramnath*(2) the University was also held to be outside the ambit of industry for the same reason. The learned Chief Justice then summarised the working principle—the broad test or criterion for determining what is an undertaking analogous to trade or business—in these terms :

> "It, therefore, follows that before an industrial dispute
E 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
F 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.",

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and after referring to the observations of Isaacs and Rich, JJ., in *Federated Municipal and Shire Council Employees of Australia* v. *Melbourne Corporation* (supra) pointed out that these observations showed that "industrial disputes occur in operations 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*
H *services.*" (emphasis added).

(1) *National Union of Commercial Employers* v. *M. R. Meher*, [1962] Supp. 3 S. C. R. 157.

(2) [1964] 2 S. C. R. 703.

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It would thus be seen that the broad test for determining when an undertaking can be said to be analogous to trade or business laid down in the *Safdarjung Hospital* case (supra) was the same as in the *Hospital Mazdoor Sabha* case (supra). The *Safdarjung Hospital* case did not make any real departure the enunciation of this test. It is only in the application of this test to the case of hospitals that the *Safdarjung Hospital* case took a different view and observed that the judgment in the *Hospital Mazdoor Sabha* case (supra) had taken "an extreme view of the matter which was not justified". There was also one other ground on which the decision in the *Safdarjung Hospital* case disapproved of the view taken in the *Hospital Mazdoor Sabha* case and that ground was that the decision in the *Hospital Mazdoor Sabha* case proceeded on an erroneous basis that an activity, in order to be an undertaking analogous to trade or business, need not be an economic activity and applied a wrong test, namely, 'can such activity be carried on by private individuals or group of individuals ?' It would, therefore, seem that, in view of the decision in *Safdarjung Hospital* case, this last test applied in the *Hospital Mazdoor Sabha* case must be rejected as irrelevant and it must be held that an activity, in order to be recognised as an undertaking analogous to trade or business, must be an economic activity in the sense that it is productive of material goods or material services.

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To summarize, an activity can be regarded as an 'industry' within the meaning of s. 2(j) only if there is relationship of employer and employees and the former is engaged in 'business, trade, undertaking, manufacture or calling of employers' and the latter, 'in any calling, service, employment, handicraft or industrial occupation or avocation'. Though 'undertaking' is a word of large import and it means anything undertaken or any project or enterprise, in the context in which it occurs, it must be read as meaning an undertaking analogous to trade or business. In order that an activity may be regarded as an undertaking analogous to trade or business, it must be "organised or arranged in a manner in which trade or business is generally organised or arranged". It must not be casual nor must it be for oneself nor for pleasure. And it must rest on co-operation between employer and employees who associate together with a view to production, sale or distribution of material goods or material services. It is entirely irrelevant whether or not there is profit motive or investment of capital in such activity. Even without these two features an activity can be an undertaking analogous to trade or business. It is also immaterial "that its objects are charitable or that it does not make profits or even where profits are made, they are not distributed amongst the members",(1) or that its activity is subsidised by the Government. Again it is not necessary that "the employer must always be a private individual... The Act, in terms, contemplates cases of industrial disputes where the Government or a local authority or a public utility service may be the employer ..."(2) It also makes no difference that the material services rendered by the undertaking are in public interest.

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(1) *Management of FICCI* v. *Workmen*, [1972] 2 S. C. R. 353 at 376.

(2) *Madras Gymkhana* case, p. 756 of the Report.

A The concept of public interest in a modern welfare State, where new social values are fast emerging and old dying out, is indeed so wide and so broad and comprehensive is its spectrum and range that many activities which admittedly fall within the category of 'industry' are clearly designed to subserve public interest. In fact, whenever any industry is carried on by the Government, it would be in public interest, for the Government can act only in public interest. Whether B an activity is carried on in public interest or not can, therefore, never be a criterion for determining its character as an industry. Having thus examined the legal concept of industry as expounded in the decisions of this Court, we may now proceed to consider whether the activity of the Institution can be characterised as an industry in the light of the broad test discussed by us.

C The Institution owes its genesis to the Government of India Resolution No. 1 STD(4)/45 dated 3rd September 1946. Prior to this Resolution, British and American standards were generally adopted for our country. But due to diversity of raw-materials available in our country and the processes employed for manufacture, it was increasingly felt that the British and other standards were not always suitable for adoption in our country and it was necessary to establish a D central standards organisation for fixing Indian standards. The Government of India, therefore, passed this Resolution for setting up an organisation to be called the Indian Standards Institution with its Headquarters at New Delhi. Pursuant to this Resolution, the Institution was registered and establish under the Societies Registration Act, 1860. Clause (3) of the Memorandum of Association sets out objects of the Institution and, so far as material, they are as follows :

E "(a) To prepare and promote the general adoption of standards on national and international basis relating to structures, commodities, materials, practices, operations, matters and things, and, from time to time, to revise, alter and amend the same.

(b) To promote standardization, quality control and F simplification in industry and commerce.

(c) ... ...

(d) To co-ordinate the efforts of producers and users for the improvement of materials, products, appliances, processes and methods.

(e) To provide for the registration of standardization G marks applicable to products, commodities, etc., for which it issues standards to be branded on or applied to those products, commodities, etc., which conform to standards set.

(f) To provide or arrange facilities for the examination and testing of commodities, processes and practices, and for any investigations or research that may be necessary.

H (g) ... ...

(h) ... ...

(i) ... ...

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(j) To communicate, information to members on all matters connected with standardization and to print, publish, issue and circulate such periodicals, books, circulars, leaflets and other publications as may seem conducive to any of the objects of the Institution".

The income and property of the Institution, however derived, are directed by cls. (6) and (7) of the Memorandum of Association to be B applied towards the promotion of the objects as set forth in the Memorandum of Association and no portion of the income or property is divisible or distributable amongst the members, either during the active life of the Institution or on its winding up or dissolution.

The Rules and Regulations of the Institution make various provisions in regard to the mechanics of the functioning of the Institu- C tion. Rule 2 lays down that there shall be two categories of members, namely, subscribing members and committee members and their rights and privileges are enumerated in Rule 5. Rule 7 vests the management of the affairs of the Institution in a General Council and its composition is laid down in Rule 8 and its functions, in Rule 11. Rule 15 provides for the constitution of the Executive Committee and it lays down that the Executive Committee shall have the powers to D manage the day-to-day affairs of the Institution, including administration of ISI (Certification Marks)) Act, 1952 in conformity with policies laid down by the General Council. The Institution can have different branches as may be decided upon by the General Council under Rule 18. Rule 19 says that a division shall constitute the main section of the technical activities of the Institution and Rule 20 declares that the work of a division shall be controlled by a Division E Council. What shall be the constitution of a Division Council is laid down in Rule 22 and that Rule provides that a Division Council shall be constituted from the representatives of the respective interests of users, manufacturers and other persons or bodies concerned in or associated with the industries included in the Division. Rule 26 deals with Sectional Committees and it says that the Sectional Committee shall be appointed by a Division Council or if necessary, by Executive F Committee for the preparation of a particular standard or group of standards and the Sectional Committee shall be composed of representatives of such interests as, in the opinion of the Division Council or Executive Committee, are concerned with the standards referred to the Committee. It emphasises that on the Sectional Committee all interests shall be adequately represented including scientists and technicians, G but consumer interest shall, as far as possible, predominate.

Now, at this stage it would be convenient to explain what are standards and why they are necessary to be established. Standards are technical documents describing constructional, operational and technological requirements of a material, a product or a process for a given purpose. They furnish such details as materials to be used, dimensions and sizes to be adopted, performance to be expected, and H quality to be achieved; they also give methods of tests for comparing and judging quality of goods produced by the manufacturer. Standards may be of any one or more of the following five categories : (a)

A Dimensional Standards which secure interchangeability and eliminate unnecessary variety of types for the same or similar purposes; (b) Performance and Quality Standards which ensure that the final article will be fit for the job it is designed to do; (c) Standard Methods of Tests which enable materials or products intended for the same purpose to be compared uniformly; (d) Standard Technical Terms and Symbols which provide a common, easily understood technical language for the B industry, and (e) Standard Codes of Practice which set out the most efficient methods of installation, use and maintenance of equipment and recommend methods of technical operations. These are necessary in order to meet the challenges posed by the fast developing industry economy of the country and mass production of economic goods and services. The manufacturer should be able to produce goods of specified quality so that he can win the confidence and good-will of the C consumer and build up internal and external markets for his products. He should also be able to increase his productivity, produce goods at minimum cost and achieve overall economy by best utilization of human and material resources at its disposal. Standards which are based on the consolidated results of science, technology and experience, furnish guidance to the manufacturer in this behalf and confer economic benefits for the development of industry and smooth flow of commerce.

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The procedure for preparing standards is laid down in Rule 29 of the Rules and Regulations of the Institution. The underlying principles for the preparation of standards are that they shall be in accordance with the needs of the industry and fulfil a generally recognised want, that the interests of both producers and consumers shall be considered and that periodic review shall be undertaken. The work E of standardisation on any specific subject can be undertaken only when the Division Council concerned is satisfied, as a result of its own deliberations or of an investigation and consultation with the producer and consumer interests, that the necessity for standardisation has been established. When the subject has been so investigated and the need established, the Division Council concerned would refer the work to an appropriate Sectional Committee and the Sectional Committee would F then explore and study the subject and prepare a draft of the proposed standard. The draft standard would then be issued in draft form for a period to be determined by the Sectional Committee but not less than three months and widely circulated amongst those likely to be interested for the purpose of securing critical review and suggestions for improvement which, if found desirable, would be incorporated in the draft. This procedure for circulation can, in an appropriate case, be curtailed G or dispensed with by the Division Council. The consideration of the comments received as a result of the circulation of the draft standard would be undertaken by the Sectional Committee and the final draft prepared after verification in the appropriate laboratories where necessary. The standard so finalised by the Sectional Committee would then be referred to the Division Council concerned for adoption and on such adoption by the Division Council, it would be published as H an Indian Standard.

The Institution thus prepares and publishes Indian Standards on different subjects and some of these Indian Standards are also revised

so as to keep abreast with the latest developments in manufacturing and testing techniques and to improve the quality of goods. The Annual Report of the Institution for 1967-68 shows that the number of Indian standards in force on 31st March, 1968 was 4564 and during that year 159 existing Indian standards were revised. The activity of the Institution in regard to preparation and publication of Indian standards has continued to increase over the years and, according to the Annual Report of the Institution for 1973-74, the number of Indian standards in force on 31st March, 1974 was 7760 and during that year, as many as 243 existing Indian standards were subjected to revision.

Indian standards thus published, whether new or revised, are sold by the sales service of the Institution at its headquarters and at the various branch offices and as the Annual Report for 1973-74 shows, the proceeds from the sales of Indian standards have steadily increased from year to year and reached the figure of Rs. 16,24,170/- during the year 1973-74. The Institution also acts as a sole selling agent for sale of overseas standards on commission basis and from this activity, the Institution derives a large income, which during the year 1973-74 amounted to as much as Rs. 3,20,700/-.

The Institution also carries on another activity which is the direct outcome of preparation and publication of Indian standards and that activity is the result of implementation of the Indian Standards Institution (Certification Marks) Act, 1952 (hereinafter referred to as the Certification Marks Act). Section 2, cl. (1) defines 'standard mark' to mean the Indian Standards Institution Certification Mark specified by the Indian Standards Institution to represent a particular Indian standard. Sub-section (1) of s. 5 imposes a prohibition that no person shall use, in relation to any article or process, or in the title of any patent, or in any trade mark or design, the Standard Mark or any colourable imitation thereof, except under a licence granted under the Act and another prohibition is imposed by sub-s. (2) of s. 5 that no person shall, notwithstanding that he has been granted a licence, use in relation to any article or process the Standard Mark or any colourable imitation thereof, unless such article or process conforms to the Indian Standard. Since the Standard Mark is intended to represent a particular Indian Standard, obviously no one can be allowed to use the Standard Mark or any colourable imitation thereof, except under a licence granted by the Institution, for it is only through the machinery of a licence that the Institution would be able to exercise a check on the person concerned and ensure that the article manufactured or process employed by him conforms to the Indian Standards and that the Standard Mark is not abused by him and it does not become an instrument of deception. It is for this purpose that s. 8 confers power on the Institution to appoint inspectors for inspecting whether any article or process in relation to which the Standard Mark has been used conforms to the Indian Standard or whether the Standard Mark has been improperly used in relation to any article or process, with or without licence.

A The Central Government has, in exercise of the power conferred under s. 20 of the Certification Marks Act, made the Indian Standards Institution (Certification Marks) Rules, 1955. Rule 4 requires that the design of the Standard Mark in relation to each Indian Standard together with the verbal description of the design of the Standard Mark and the title of the Indian Standard shall be published B by the Institution. Rule 5 provides for the making of an application for grant of a licence : Rule 7 stipulates for the holding of a preliminary inquiry by the Institution before granting a licence and Rule 8 lays down when a licence may be granted or renewed. Under Rule 6, the fees and expenses leviable in respect of grant or renewal of licence and in respect of all matters in relation to such licence are left to be prescribed in the Regulations. Regulation 7 of the Indian Standards C Institution provides that every application for the grant of a licence shall be accompanied by a fee of Rs. 100/- and every application for a renewal of such licence shall be accompanied by a fee of Rs. 50/- and in addition to this application fee, there shall be paid by every licensee an annual licence fee of Rs. 200/- and a marking fee proportionate to the quantum of the annual production of the article or process in respect of which the licence has been granted. Regulation 9 D requires every licensee to institute and maintain to the satisfaction of the Institution a system of control to keep up the quality of his production or process by means of a scheme of inspection and testing attached to the licence and Rule 10 confers power on an Inspector to enter upon the premises of a licensee with a view to ascertaining that the Standard Mark is used in accordance with the terms and conditions imposed by the Institution and that the scheme of routine inspection E and testing specified by the Institution is being correctly followed.

It will, therefore, be seen that the Standard Mark is the most authentic representation to the consumer that the article or process in respect of which it is used conforms to the relevant Indian Standard and Indian Standard thus becomes meaningful and advantageous by reason of the use of the Standard Mark. But no one can use the Standard Mark without a licence from the Institution and even if there F is a licence, the Standard Mark cannot be used in relation to an article or process unless such article or process conforms to the relevant Indian Standard. The issue of licences for use of Standard Marks under the Certification Marks scheme is, therefore, a very important activity of the Institution complementary as well as supplementary to preparation and publication of Indian Standards. The Certification Marks scheme has been making considerable progress from year to G year and while, according to the Annual Report of the Institution for 1967-68, the total number of licences issued since the inception of the scheme upto 31st March, 1968 was 1665 and the annual value of goods covered under the scheme was approximately Rs. 3800 million. the total number of licences granted upto 31st March, 1974 increased to 3784 and the annual value of goods covered under the scheme rose to approximately Rs. 5000 million during the year 1973-74 as H per the figures contained in the Annual Report for that year. The total income from certification marking does not appear to have been shown separately in the Annual Report of the Institution for the year

1967-68, but according to the Annual Report for 1973-74, it was Rs. 5.2 million during that year. The Annual Reports of the institution clearly reveal that from year to year the total number of licences granted by the Institution is steadily increasing and so is the total income from certification marking.

The Institution has also several laboratories for the purpose of carrying out testing operations. It has a well equipped library at the Headquarters and there are also laboratories at the branch offices where testing of different articles is carried out. The testing work carried out in these laboratories has shown a consistent rise over the years and while during the year 1967-68 the number of samples received for testing was 3853 and the value of testing work done was Rs. 3,96,468, the number of samples received during 1973-74 was 12726 and the value of testing working done during that year was Rs. 8,76,847.58. The samples tested at the laboratories are not only those submitted by the manufacturers, distributors and consumers, but also those taken by the Inspectors for the purpose of ascertaining whether any article or process in relation to which the Standard Mark is used conforms to the Indian Standard or whether the Standard Mark has been improperly used in relation to any article or process. The laboratories are also used in connection with the preparation of Indian Standards as contemplated in cl. (f) of Rule 29 of the Rules and Regulations of the Institution.

Then, the Institution maintains libraries at the Headquarters and at the branch offices which render useful services to the subscribing members, the Committee members, the Staff members and others. The library at the Headquarters, which is open to visitors, has complete sets of overseas standards and specifications and related indices. It has also classified subject catalogues for consultation and retrieval of information on standardization. It also prepares and circulates for the benefit of its users a monthly list of current published information on standardization. It has also brought out fortyone bibilographies at the request of technical staff and Committee members and also published an important bibliography, namely, 'World List of Standards on Paper Products'. Quite often, technical enquiries are received from the industry and the necessary information is supplied by the libraries of the Institution. The libraries also disseminate technical information on national and overseas standards, specifications and other allied subjects.

The Institution is also bringing out regularly ISI bulletin, Sandards Monthly Additions and miscellaneous publications such as Annual Report, Handbook of ISI publications, brochures, leaflets and a large number of advertisements. These publications are distributed amongst the members and are also sold to non-members and they are intended to publicise the activities of the Institution, promote widespread implementation of Indian Standards, propagate the Certification Marks scheme, create awareness about the importance of standardization and quality control and further the standardization movement in the country. The Institution is also making concerted efforts for furthering standardization movement among different sectors of economy

A through out the country through different media of publicity and for that purpose it contributes articles, reviews and write-ups on different aspects of standardization and other activities in newspaper journals, souvenire, reference publications etc. and holds *inter alia* radio broadcasts, press conferences, exhibitions, seminars, conferences and conventions.

B It is clear from the resume of the activities of the Institution given above that the undertaking of the Instituion answers the broad test laid down in the *Safdarjung Hospital* case (supra) and explained by us in the earlier part of the judgment and must be held to be an industry within the meaning of s. 2(j). The activities of the Institution are carried on in a systematic manner and are organised or arranged in a manner in which trade or business is ordinarily organised or arrang-
C ed. The Institution derives large income from its activities, which was about Rs. 4.5 million in 1967-68 and rose to about Rs. 10.2 million in 1973-74, a bulk of the income being accounted for by sale proceeds of Indian Standards and Certification Marking Fees. The object of the activities of the Institution is to render material services to a part of the community, namely, manufacturers, distributors and consumers. Standards set the recognised level of good quality, corner
D stone for building domestic and export markets and developing goodwill and prestige for the manufacturer : they provide the framework for mass production, increase in productivity, simplification in production process and enhancement in labour efficiency : they make for dimensional interchangeability by setting national and also international patterns of interrelated sizes : they incorporate results of the latest developments in research and technology : they increase con-
E sumer confidence and goodwill bringing wide markets and quick turnover with savings for the buyer and they bring more profits and lower costs by optimum utilization of scarce resources. The brochure on "Standards for Textiles" points out that amongst various advantages which accrue from the application of standards in the day-to-day manufacturing programmes are increased efficiency, less waste of manpower and material, higher productivity through longer runs in the
F factory, simplified buying, costing and cataloguing and stabilizing and promoting exports by sending goods of uniform quality abroad. The Certification Marking Scheme involving issue of licences for use of Standard Marks, maintenance of laboratories and libraries, bringing out various publications, such as ISI bulletin, Standards Monthly Additions and other brochures and leaflets and publicity through different kinds of media, which constitute the other activities of the
G Institution apart from preparation and publication of Standards, are intended to promote implementation of Standards, create consciousness about the importance of standardization and quality control amongst different sectors of the economy and further inplant standardization activity, with a view to helping the manufacturer, to step up production and lower manufacturing cost, increasing labour efficiency by simplifying production processes and ensure dependable and quality
H goods, increase consumer confidence and goodwill and achieve greater turnover and increased profits by maximum utilization of human and material resources, the distributor, to add to his turnover and to his reputation by marketing uniform quality of goods of high standard

assured by compliance with the Standards and the consumer, to benefit from lower prices, higher quality and more safety—in short, get value for the money spent by him. The Institution renders what are termed 'extension services' to industries which opt for them and these extension services are made available in three district phases, namely, Pilot Study, Systematic Development and Evaluation. If this is not rendering of material services to a section of the community, we fail to see what other activity can be so regarded. There is also cooperation between the management of the Institution and the employees who are associated together for rendering these material services. It is true that the Standards are prepared by Sectional Committees which are composed of representaives of all concerned, including scientists and technicians, with consumer interest playing a dominant role and they are not exclusively the result of the work carried out by the employees, but the participation of the employees is not altogether absent. Not only do the employees who are technicians participate in the work relating to various aspects of preparation of Standards but the draft standards are also verified in the laboratories of the Institution which are operated by the employees. Moreover, the distribution and sale of Standards prepared and published by the Institution is being made through the employees. The Certificate Marketing scheme, maintenance of laboratories and libraries, publication of ISI bulletin, Standard Monthly Additions and other magazines, journals and leaflets and publicity of the activities of the Institution are all carried on with the help of the employees. There are a large number of employees of the Institution belonging to Grades II, III and IV, apart from officers in Grade I. Some of the employees in Grade II are technical people closely associated with the technical activities of the Institution. There can, therefore, be no doubt that the activities of the Institution fall within the category of undertaking analogous to trade or business and must be regarded as an 'industry' within the meaning of s. 2(j).

This view which we are taking receives support from an earlier decision of this Court in the *Ahmedabad Textile Industry Research Association* v. *The State of Bombay & Ors.*(1) There the question was whether the activity of the appellant-Association, which was a textile research institute established for the purpose of carrying on research and other scientific work in connection with the textile trade or industry and other trade and industries allied there with or necessary thereto, was an 'industry' for the purpose of the Act. This Court analysed the activity of the appellant-Association and pointed out that it is an "activity systematically undertaken; its object is to render material services to a part of the community (namely, member-mills) —the material services being the discovery of processes of manufacture etc. with a view to secure greater efficiency, rationalisation and reduction of costs of the member-mills; it is being carried on with help of employees (namely, technical personnel) who have no rights in the results of the research carried on by them as employees of the association; it is organised or arranged in a manner in which a trade or business is generally organised; it postulates cooperation between

(1) [1961] 2 S. C. R. 482.

A employers (namely, the association) and the employees (namely, the technical personnel and others) which is necessary for its success, for the employers provide monies for carrying on the activities of the association and its object clearly is to render material services to a part of the community by discovery of process of manufacture etc. with a view to secure greater efficiency, rationalisation and reduction of costs." It was observed by this Court that the undertaking as a whole B is "in the nature of business or trade organised with the object of discovering ways and means by which the member-mills may obtain larger profits in connection with their industries," and on this view, the Court held that "the appellant-association is carrying on an activity which clearly comes within the meaning of the word 'industry' in s. 2(j)". This case bears a very close analogy to the present case and indeed, some of the observations made by this Court in that case C particularly those underlined by us—aptly describe the nature of the activities of the Institution and the reasoning on which the decision in this case is based is equally applicable in the decision of the present case.

There is also one other decision of this Court which amply supports the view we are taking and that is the decision in the *Management of the FICCI* v. *Workmen* (supra). The question which arose D in that case was whether the Federation of Indian Chambers of Commerce and Industry, for short referred to as FICCI, was an industry within the meaning of s. 2(j). This Court reviwed most of the earlier decisions on the subject and after summarising the broad test for determining what is an industry, proceeded to analyse the activities of FICCI and pointed out that "the Federation carries on systematic E activities to assist its members and other businessmen and industrialists and even non-members, as for instance, in giving them the right to subscribe to their bulletin; in taking up their cases and solving their difficulties and in obtaining concessions and facilities for them from the Government. These activities are business activities and material services, which are not necessarily confined to the illustrations given by Hidayatullah, C.J., in the Gymkhana case by way of illustration F only, rendered to businessmen, traders and industrialists who are members of the constituents of the Federation. There can in our view be no doubt that the Federation is an industry within the meaning of s. 2(j) of the Act." This decision is also very apposite and helpful and leaves no doubt that the activities of the Institution in the present case are an 'industry' so as to attract the beneficent provisions of the Act.

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We, therefore, allow the appeal, set aside the order passed by the Industrial Tribunal and direct the Industrial Tribunal to proceed with the Reference before it on merits on the basis that the activities of the Institution constitute an 'industry' within the meaning of s. 2(j) of the Act. The respondents will pay to the appellants costs of the appeal as also costs of the hearing before the Industrial Tribunal.

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ALAGIRISWAMI, J. I am sorry I find myself unable to agree with my learned brother Bhagwati J. The facts of the case have been

elaborately set out in his judgment and it is unnecessary to repeat them. It would be necessary, however, to refer to one or two other facts which have not been mentioned in their proper place.

After the very clear decision by this Court in its judgment in *Gymkhana Club Union* v. *Management*(1) and its endorsement in its judgment in *Safdarjung Hospital* v. *K. S. Sethi*(2) the decision in *State of Bombay* v. *The Hospital Mazdoor Sabha*(3) has become irrelevant. The *Gymkhana Club case* has laid down that any trade, business, undertaking, manufacture or calling of employers is an industry and once the existence of an industry viewed from the angle of what the employer is doing is established, all who render service and fall within the definition of 'workman' come within the fold of industry, irrespective of what they do. It was also pointed out that the word 'undertaking', though elastic, must take its colour from other expressions used in the definition of 'industry', and must be defined as any business or any work or project resulting in material goods or material services and which one engages in or attempts as an enterprise *analogous to business or trade.* It also pointed out that the test adopted in *Hospital Mazdoor case* (supra) namely, could the activities be carried on by a private individual or group of individuals for the purpose of holding that running a Government hospital was an industry—must be held to have taken an extreme view of what is an industry and that this test is not enlightening. With regard to local bodies it was pointed out that they are political sub-divisions and agencies for the exercise of governmental functions, but if they indulge in municipal trading or business or have to assume the calling of employers they are employers whether they carry on or not business commercially for purposes of gain or profit. It was finally held 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 and the word 'undertaking' was defined as "any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade." These ideas were crystallised in the judgment in *Safdarjung Hospital case* and for facility of reference I may quote the first conclusion in the headnote :

> "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 to 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, employment, handicraft or industrial occupation or avocation. But every case of em-

(1) [1968] 1 S. C. R. 742. (2) [1971] 1 S. C. R. 177.
(3) [1960] 2 S. C. R. 866.

ployment 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 relation to the employers, namely, any business, trade, undertaking, manufacture or calling of employers. In the collocation of the terms and their definitions these 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 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 empolyment 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 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 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."

It criticised the decision in *Hospital Mazdoor case* in words which have been summarised in headnote 2 as follows :

> "The decision in *State of Bombay* v. *Hospital Mazdoor Sabha* 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 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'."

and also pointed out 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. Applying these tests it was held that the Safdarjung Hospital was not embarked on an economic activity which could be said to be analogous to trade or business, that there was no evidence that it was more than a place where persons could get treated, that it was a part of the functions of Government and the Hospital was run as a Department of Government and that it could not, therefore, be said to be an industry. The Tuberculosis Hospital was held to be not an industry because it was wholly charitable and a research institute, the dominant purpose of the Hospital being research and training and as research and training could not be given without beds in a hospital, the hospital was run. The Kurji Holy Family Hospital was held not to be an industry on the ground that its objects were entirely charitable, that it carried on work of training, research and treatment and that its income was mostly from donations and distribution of surplus as profit was prohibited.

The idea behind these decisions could be crystallised thus : Even where a trade, business, undertaking, manufacture or calling of employers results in production of material goods or rendering of material services, such an undertaking engaged in trade, business, manufacture or calling of employers will not be an industry if it is run on charitable principles or is run by Government or local body as part of its duty. In other words, whenever an undertaking is engaged in activity which is not done with a view to exploit it in a trading or

A commercial sense but for public interest and without any profit motive or in the form of social service or in the form of activity intended to benefit the general public it will not be an industry.

The Indian Standards Institution was set up by a Resolution of the Government of India and registered under the Societies Registration Act, 1860. My learned brother Bhagwati J. has set out the Memorandum of Association, the rules and regulations of the Institution and explained what the standards established by the Institution are as also its role in the implementation of Indian Standards Institution (Certification Marks) Act, 1952. It is unnecessary to set out all of them at length. A bare scrutiny of the objects of the Institution would show that they are concerned with broad public interest of the country as a whole and no part of the objects of the Institution has anything to do with serving any private interest. The standards are prepared by committees in which all interests are adequately represented, including scientists and technicians but consumer interest has, as far as possible, to predominate. As pointed out by my learned brother, the Standard Mark is the most authentic representation to the consumer that the article or process in respect of which it is used conforms to the relevant Indian Standard and Indian Standard thus becomes meaningful and advantageous by reason of the use of the Standard Mark. The existence of laboratories and libraries are incidental and in furtherance of the specifications of standards and the application of the Standard Marks. The Institution has no capital, it does not distribute profits and even when it is wound up the assets would not go to any private individual. It is not run with a profit motive. It is thus not an enterprise analogous to business or trade. In fact one can go further and say that its activity is only a manifestation of governmental activity. Instead of itself performing these duties the Government have set up the Institution in effect for the purpose of discharging duties which the Government itself has to do in the service of the general public. What the Institution does it thus to render material services. It is in recognition of the role which the Institution plays as an instrument of Government that it had made a contribution of 40 lakhs and odd out of the income of 73 lakhs of the Institution in the year 1973-74. Thus the material service which the Institution renders is really a subsidised service and it is rendered in public interest. It is an Institution interested and engaged in service to the public. Its activities do not go to swell coffers of anybody. Applying therefore the tests which have been evolved and applied in the *Gymkhana Club case* and the *Safdarjung Hospital case* it is obvious that the Institution is not engaged in an industry.

The judgments of this Court in *Management of FICCI* v. *Workmen*(1) and *Ahmedabad Textile Industry Research Association* v. *The State of Bombay & Ors.*(2) are not relevant because in the case of the Federation it was intended to benefit the members of the commercial community and not the public in general. The Ahmedabad Textile Industry Research Association's activities were in the nature of business or trade organised with the object of discovering ways and means by

(1) [1972] 2 S. C. R. 353. (2) [1961] 2 S. C. R. 482.

which the member-mills may obtain larger profits in connection with their industries. The activities of the Indian Standards Institution are not intended to benefit any class of businessmen or to enable them to increase their income. It is a public service institution and therefore must be held not an industry.

I would, therefore, dismiss the appeal

ORDER

In view of the decision of the majority, the appeal is allowed and the Industrial Tribunal should proceed with the Reference before it on the merits. The respondents will pay to the appellants costs of the appeal as also costs of the hearing before the Industrial Tribunal.

S.R.