Management of the Federation of Indian Chambers of Commerce and Industry

Vs

Their Workman, Shri R. K. Mittal

Civil Appeal No. 244 of 1967

(C.A. Vaidialingam, P. Jagmohan Reddy JJ)

15.11.1971

JUDGMENT

JAGANMOHAN REDDY, J. -

1. In this Appeal the Award of the Labour Court directing reinstatement of the Respondent R. K. Mittal, an employee of the Appellant (hereinafter referred to as 'the Federation') with full back wages and continuity of service is challenged. In February, 1965, the 20th Congress of International Chamber of Commerce was held in Delhi for which purpose a Committee known as the Indian National Committee of International Chamber of Commerce was brought into existence and the services of the Respondent along with other workmen were loaned to it by the Federation. The Respondent worked for about 40 days but was only paid overtime for about 7 days and consequently he claimed overtime for the remainder of the days as according to him other workmen had also been paid similarly. This claim was not admitted by the Federation with the result that the Respondent caused a Lawyer's notice to be issued to the Federation, to the Indian National Committee of International Chambers of Commerce and to the International Chamber of Commerce with its Head Office at Paris, demanding payment of his dues amounting to about Rs. 600/-. When no replies were received, he caused another notice to be served threatening to file a suit whereupon the International Chamber of Commerce sent a telegram to the Federation enquiring whether it should deal with the matter or whether they would deal with it. To this the Federation replied that it will deal with it, but it appears that the claim of the Respondent was not settled. The Respondent then filed a suit for the payment of the arrears. The Federation felt that this action of the Respondent in causing legal notices to be served on the International Chamber of Commerce was taken with a view to bringing the Federation into disrepute, and it was capable of so bringing it in the eyes of the International Chamber of Commerce which Act being inconsistent with his duties and obligations as an employee constituted misconduct. A large-sheet was served on the Respondent and a domestic enquiry was held in which he was held to be guilty of misconduct. This finding was forwarded to the Secretary who instead of dismissing him took a lenient view and terminated his services. Thereafter it is alleged that he filed a suit against the Federation and subsequently raised an Industrial dispute which was referred to the Labour Court for determination of the following issues namely whether the termination of the services of Shri R. K. Mittal is illegal and unjustified and if so what directions are necessary in this respect. After this reference it is stated that the suit filed by him have been withdrawn.

2. It was alleged that the workman's grievance was unjustified and in spite of his being informed that no discrimination has been practised he with a view to harass the management and compell it by unfair means to pay him more than what was legitimately due to him, started making complaints simultaneously to the Federation and International Chamber of Commerce which did not employ

him and with the full knowledge that whatever grievance he legitimately had, had to be resolved only by a reference to the Federation which was his employer. It was avered that the enquiry conducted was fully in accordance with the principles of natural justice and requirements of law, that the findings of the Enquiry Officer were fair, reasonable and fully supported by the records of the enquiry and that these definitely established the guilt of the Respondent. In any case the Federation was not an industry. On behalf of the Respondent it was contended that the Federation alone was not the host but it was the Indian National Committee of the International Chamber of Commerce constituted of some officials of the Federation and the International Chamber of Commerce which conducted the 20th Congress and it was this Committee that employed the Respondent and paid him and the other workmen their remunerations. The attendance of the workmen was marked in a separate attendance register maintained for all such workmen who were engaged to work for the Congress irrespective of the fact whether those were the employees of the Federation or otherwise, that in spite of the representations when the management did not reply, the Respondent consulted two Lawyers and instructed them to serve necessary legal notices who advised him that as the work related to the 20th Congress was managed by an independent Committee his claim for the remuneration against the Federation alone would not lie and that he would have to make a claim on all the three bodies namely the Federation, the Indian national Committee of International Chamber of Commerce and the International Chamber of Commerce, Paris, who constituted and managed the affairs of the Congress. He denied that there was any mala fide on his part nor did he ever intend to defame the Federation by serving a notice in accordance with the legal advice given to him. He, however, expressed his sincere regrets to the management and submitted his appeal to the Secretary General of the Federation and requested him to consider the matter, but it was not even acknowledged. In any case the punishment of discharge in such a small matter is too severe and completely out of proportion and smacks of victimisation. The assertion that the Federation was not an industry was denied.

3. Before the Tribunal a preliminary issue was raised that the Federation was not an industry and therefore, the Labour Court had no jurisdiction to adjudicate on the reference. This preliminary objection was overruled and it was held on the evidence, that the charge held proved against the Respondent in the domestic enquiry was illegal and unjustified; that the Secretary had no authority to terminate the services; that the management did not like the Trade union activities; that the action of termination of services of the Respondent amounted to victimisation and that even if it was not an act of victimisation in any event the punishment is severe and therefore, it amounted to victimisation.

4. Even before us similar arguments as were urged before the Tribunal have been again agitated with further amplification. It is contended that the Federation is not an industry in that, neither its activity is industrial nor is its objects commercial but on the other hand they are of non-business character and charitable.

5. The Appellant contends that the Federation was not constituted for any one employer or group of employers but was to subserve the good of the business of the community as a whole. This object of the Federation is achieved in various ways. The Federation is always nominated by the Government as a member in an Advisory Committee on various national and International Committees which make economic policies. It organises exhibitions with the active financial support and co-operation of the Government. In order to promote Indian business, it undertakes publications and arbitration which are ancillary to its main activities namely the promotion of business for the community as a whole which is an object of general public utility. It is also contended that the Memorandum and Article of the Association of the Federation and the evidence on record show that the Federation

does not follow any trade, business, manufacture or undertaking or calling of employers in the production of material goods or material services does it have a profit motive. On the basis of these activities and objects of the Federation, the following three propositions were submitted on behalf of the Appellants :

(1) This Court has uniformly held that unless the test that the activities carried on by the employer is trade, commerce, industry or manufacture or of rendering material service is satisfied, it will not be an industry under the Act.

(2) The promotion of trade and commerce, which is the main activity of the employer in this case, is not an activity in the nature of or analogous to the activities under the first proposition.

(3) As a corollary it follows that the Federation which is really carrying on an activity considered to be an object of general public utility and subserves a charitable purpose cannot be held to be an industry.

6. The promotion of trade and commerce, it is submitted is a charitable object which is the dominant object of the Federation and hence it is not an industry as held in some of the recent cases by this Court. What has to be seen is whether the promotion of trade, commerce or industry which is considered to be a charitable object can be termed as a business or trade resulting in the production of material services within the meaning of an industry under Section 2(j) of the Act. In brief it was argued that if both the ends and means are charitable, the ends being the activity and the means the object, the undertaking cannot come within the definition of industry. In support of this, several decisions rendered under the Indian Income-tax Act have been pressed into service and relied upon.

7. The Respondents contention on the other hand is that the main objects of the Federation are given by it in Clauses 3(a) and (k) of its pamphlet "Federation of Indian Chamber of Commerce and Industry - Organisation - Functions"; that the Federation undertakes national and International Exhibitions having held such exhibitions in 1961 and 1965, earning huge profits of Rs. 40 lakhs and Rs. 22 lakhs respectively; that the Appellant Federation carries on the activities of publication of Books and Magazines and publishes fortnightly Review, that it endeavours take up with the concerned authorities the specific difficulties expressed by its members in their day to day business; that it arranges commercial arbitrations between co-members and between non-members; that it has set up a tribunal of Arbitration for the determination, settlement and adjustment of commercial disputes relating to business, trade and manufacture arising between parties in India or a party in India and a party in foreign country who agree or have agreed in writing to submit such disputes and differences for arbitration under the rules of the Tribunal and earns huge amounts as service charges from the parties who submit their disputes to the Tribunal set up by the Federation; that it is constructing a museum to advertise publicise the products of the Indian manufacturers and that it renders liaison service to members as well as non-members in the matter of procuring licences, capital issue, Company Law problems, tax problems, etc. All these activities the Respondent contends show that the Federation in carrying on activities and performing all such functions as would benefit the business community and the industrialists for securing concessions in taxation and foreign exchange which activities have benefited several industries in a great measure and would clearly establish that it is an industry.

8. On the legal aspect it is submitted that the provisions of the Income-tax Act or the Trust Act are inapplicable in that they are not concerned with the activities but with the object which an undertaking pursues, particularly in respect of the Income-tax Act where an institution is exempted

from tax liability if it has a charitable object. Even assuming that the undertaking has an object of general public utility within the meaning of the exemption, it does not ipso facto determine its activity nor does it show that it is not an industrial activity. Under the Act the learned Advocate contends it is the nature of the activity that is the test and though an organisation may have a charitable object it may nonetheless carry on an activity which comes within the terms industry, nor does the distribution of profits or otherwise is a crucial element in determining whether its activities are industrial and the undertaking an industry within the meaning of Section 2(j). It is further submitted that what has been concentrated in all the cases cited by further submitted that what has been concentrated in all the cases cited by the learned Advocate for the Appellant under the Income-tax Act is what was the dominant object of the assessee and not what it does, because in those cases the Courts were not concerned in determining what was the nature of the activities but were only concerned in ascertaining what was the dominant object. Whether these decisions are relevant for deciding the question whether a dispute referred to is an industrial dispute under the Act will be dealt with presently.

9. Before we examine the nature of the activities of the Federation it will be useful to deduce the principles which are applicable for determining whether the activities of an undertaking are such as would justify it being treated as an industry for the purposes of an industrial dispute under the Industrial Disputes Act, 1947 (hereinafter called 'the Act'). The Act it may be stated makes provision for the investigation and settlement of industrial disputes and for certain other purposes. The meaning to be given to the words Industrial dispute in Section 2(k), industry in Section 2(j), employer in Section 2(g) and workmen in Section 2(s) are relevant for ascertaining whether an undertaking is an industry or otherwise. These definitions are as follows :

Section 2(g) : "employer" means -

(i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;

(j) "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;

(k) "industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

(s) "Workman" means any person (including any apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy (Discipline) Act, 1934; or

(ii) who is employed in the Police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

10. A cursory examination of the definition of industry is Section 2(j) without the assistance of the case law would show that it has been divided into two parts; the first is, as meaning any business, trade, undertaking, manufacture or calling of employers and the second is, as including any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The first part defines it in relation to the activities of the undertaking, i.e. the employer while the second, in relation to the nature of the work done by the employees and gives an extended connotation though this part standing alone cannot define what an industry is. In either case the activity whether of the undertaking or the employees of that undertaking are to be determined in relation to its being a business, trade, undertaking, manufacture or calling of employers. In several cases decided by this Court, these definitions have been understood differently in their application to the facts and circumstances of each case which prompted Hidayatullah, J., as he then was, in the Secretary, Madras Gymkhana Club Employees Union v. Management of the Gymkhana Club [(1968) 1 SCR 742 : AIR 1968 SC 554.], after pointing out that the definitions in the Act are borrowed from other statutes particularly the latter part of the definition of 'industry' was taken from Section 4 of the 'Commonwealth Conciliation and Arbitration Act, which had caused some trouble, to say "Decisions rendered on these definitions (and some others very similar) have naturally influenced opinion making in this Court. The Australian cases in particular "have been subrosa all the time". (p. 754.)

11. For the first time in the State of Bombay and Others v. The Hospital Mazdoor Sabha and Others, [(1960) 2 SCR 866 : AIR 1960 SC 610.] a hospital was held to be an industry within the meaning of Section 2(j) of the Act. That was a case in which the hospital was run by the Government. A distinction was sought to be made between the activities of the Government in its Regal or Sovereign sphere and other activities which were undertaken in the socio-economic progress of the country as beneficial measures. The former were held not to come within the ambit of Section 2(j) while it was said that it would be incongruous and contradictory to suggest that the latter activities should be exempted from the operation of the Act which in substance is a very important beneficial measure in itself. This latter conclusion was sought to be supported by a reference to the definition of employer in 2(g)(i) as meaning "in relation to an industry carried on by or under the authority of any Department of the Central Government or State Government authority prescribed in this behalf, or where no authority is prescribed the Head of the Department". This definition, Gajendragadkar, J., as he then was said "clearly indicates that the Legislature intended the application of the Act to activities of the Government which fall within Section 2(j). In considering the question as to whether the group of hospitals run ..... undoubtedly for the purpose of giving medical relief to the citizens and for helping to impart medical education are an undertaking or not, it would be pertinent to enquire whether an activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their

conventional sense. We have already stated that the presence of profit motive is not essential for bringing an undertaking within Section 2(j)". Even where no profits are earned or even where it is run without charging fees it was considered to be an undertaking because it is the character of the activities involved in running the hospital which brings the institution of the hospital within the meaning of Section 2(j). The several attributes which are necessary to constitute the activity into an undertaking analogous to trade or business have been stated through the difficulty of setting out all the possible attributes definitely or exhaustively was recognised, and as a working principle it was stated that (a) an activity is 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; (b) such an activity generally involves the co-operation of the employer and the employees with the object of satisfying material human needs; (c) it must be organised or arranged in a manner in which trade or business is generally organised or arranged; (d) it must not be casual, nor must it be for oneself nor for pleasure. After setting the aforesaid it was also observed that "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 Section 2(j) applies". This decision also considered the question whether any quid pro quo was necessary for bringing an activity under Section 2(j) and it was held that no such element was involved. This case was considered to be on the verge as taking an extreme view in the Madras Gymkhana Club case (supra), to which one of us Vaidialingam, J., was a party.

12. The Gymkhana Club case (supra) reviewed the previous case-law in D. N. Banerji v. P. R. Mukherjee and others [1953 SCR 302 : AIR 1953 SC 58.]; Baroda Borough Municipality v. Its Workmen [1957 SCR 33 : AIR 1957 SC 110.]; The Corporation of the City of Nagpur v. Its Employees [(1960) 2 SCR 942 : AIR 1960 SC 675.]; University of Delhi and Another v. Ram Nath [(1964) 2 SCR 703 : AIR 1963 SC 1873.]; The Ahmedabad Textile Industry's Research Association v. The State of Bombay and Others [(1961) 2 SCR 480 : AIR 1961 SC 484.]; (Association case), The National Union of Commercial Employees and Another v. M. P. Meher, Industrial Tribunal, Bombay and Others [1962 Supp 3 SCR 157 : AIR 1962 SC 186.]; (the Solicitor case), Harinagar Cane Farm and Others v. State of Bihar and Others [(1964) 2 SCR 458 : AIR 1964 SC 903.]; State of Bombay and Others v. The Hospital Mazdoor Sabha and Others (supra), to ascertain the criteria for determining what an 'industrial dispute' under Section 2(k) and an 'industry' under Section 2(j) of the Act, is for the purpose of a reference of a dispute between employer and employee under Section 10(1) of the Act. Hidayatullah, J., as he then was thought that the changes made in the meaning of the expression used in the definition of industry in the Act by the several decisions referred to therein 'disclosed a procrustean approach to the problem', and that "too much insistence upon partnership between employers and employees is evident in the Solicitor's case and too little in Association case" (pages 751-752). In the Association case which was a Research Association maintained by the Textile Industry and employing technical and other staff, the tests for determining whether the activities of the Association could be construed as an industry as laid down in the Hospital case were repeated and applied. It was pointed out that for the first time in that case, namely the Associations case "a fresh text was added that as the employees had no rights in the results of their labour or in the nature of business and trade, the partnership is only association between the employer and employee." Further after seating out the various facets of the relationship of employers and employees and the need to correlate this to an industry it was observed at Page 752, "stated broadly the definition of 'industrial dispute' contains two limitations. Firstly, the adjective 'industrial' relates the dispute to an industry as defined in the Act and, secondly, the

definition expressly states that not disputes and differences of all sorts but only those which bear upon the relationship of employers and workmen and the terms of employment and conditions of labour are contemplated". It was also pointed out at page 755 that "The principles so far settled come to this. Every human activity in which enters the relationship of employers and employees, is not necessarily creative of an industry. Personal services rendered by domestic and other servants, administrative services of public officials, service in aid of occupations of the professional men, such as doctors and lawyer etc..... must be excluded because they do not come within the denotation of the term 'industry'. Primarily, therefore, industrial disputes occur when the operation undertaken rests upon co-operation between employers and employees with a view to production and distribution of material goods, in other words, wealth, but they may arise also in cases where the co-operation is to produce material services. The normal cases are those in which the production or distribution is of material goods or wealth and they will fall within the expressions trade, business and manufacture". Again at page 756, the principle was summed up thus : "It is, therefore, clear that before the work engaged it (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". In this context the meaning of the word 'trade' was considered to bear the meaning given in the Halsbury's Laws of England as (a) exchange of goods for goods or goods for money; (b) any business carried on with a view to profit, "whether manual or mercantile, as distinguished from the liberal arts or learned professions and from agriculture; and business means an enterprise which is an occupation as distinguished from pleasure. Manufacture is a kind of productive industry in which the making of articles or material (often on a large scale) is by physical labour or mechanical power". "Calling denotes the following of a profession or trade". The word 'undertaking' which is the most elastic was given as 'any business or any work or project which one engages in or attempts as an enterprise analogous to business or 'trade'. This test was said to have been laid down in Banerji's case (supra) and followed in the Baroda Borough Municipality case (supra) and it was observed that "Its extension in the Corporation case "was unfortunate and contradicted the earlier cases." Even where the activity is considered to be an industry the second question which arises is the nature of the work which the employees render. The work must be productive and workmen must be following an employment calling or industrial avocation and are not working in a managerial capacity nor are they highly paid supervisors. It is also not necessary that the workmen should receive a share though there may be occasions when he may receive a share of the produce as part of their wages or as bonus as a benefit.

13. Applying the aforesaid tests it was held that after the first part of the definition and the essential character of the club is taken into consideration, the activity of the club cannot be described as a 'trade', 'business', or 'manufacture' and the running of the club is not a 'calling' of the respondent club or its managing committee; nor can the club be said to exist for its members though occasionally strangers also take benefit from its services. It was pointed out that even after the admission of guests the Club remains the member's self-servicing institution, and while no doubt the material needs or wants of a section of the community is catered for, this is not enough, but that must be done as part of trade or business or as an undertaking analogous to trade or business, which element was found to be completely missing in a member's club. In the end in answer to the contention that the case of the Club is indistinguishable from the Hospital case (supra), it was said "That case is one which may be said to be on the verge. There are reasons to think that it took the extreme view of an industry" and that the case of a member's club is beyond even the confines established by that case".

14. The Gymkhana case (supra) was referred to in the Cricket Club of India Ltd. v. The Bombay

Labour Union and Another. [(1969) 1 SCR 600 : AIR 1969 SC 276.] In that case a preliminary objection was taken on behalf of the club that it was not an industry and the provisions of that Act were not applicable to it, so that a reference under Section 10 was not competent. The Tribunal rejected this objection against which the club came in appeal before this Court. It may be noticed that the appellant was registered under the Indian Companies Act, 1913, with the objects set out in Paragraph 3, clauses (a), (c), (d), (g), (l) and (na) of the Memorandum of Association of the Club. The Gymkhana Club case (supra) was sought to be distinguished on the ground that the activities of encouraging and promoting the game of Cricket in India and elsewhere mentioned in clause (a), financing and assisting in financing visits of foreign teams and of visits of Indian teams to foreign countries in clause (c), organising and promoting or assisting in the organisation or promotion of Provincial Cricket Associations and Inter-Provincial Tournaments in clause (d) etc., are not activities which should form part of a social or recreational club. This Court found that the appellant was a club of members organised with the primary object of encouraging supports and games; that the income earned by the club from investments of immovable properties could not be held to be income that accrued to it with the aid and co-operation of the employees. From the evidence it was clear that in effect no employees of the club were engaged in looking after the buildings which were let out for use as shops and offices; that the facility of residential accommodation provided by the club could not be said to be in the nature of keeping a hotel as this facility was provided exclusively for members of the club at much lower charges than those prevailing in the city with comparable accommodation; that the catering provided in the refreshment room of the club was also confined to the members of the club only. No outsider is allowed to take advantage of this facility, and the bye-laws of the club lay down that even if a guest was introduced by a member, the guest is not entitled to pay for any refreshment served to him; that although large parties were held at the club where catering was provided by the club and non-members attended such parties, these facilities were in fact provided at the instance of the members of the club; nor was there any evidence that a large number of such parties were held for drawing an inference that holding such parties was a systematic arrangement by which the club was attempting to make profits. The catering facilities to members and outsiders at the stalls at the time of tournament were so provided only twice a year and a concessional rates and could not therefore be said to be for the purpose of carrying on an activity for selling snacks and soft drinks to outsiders; but is really intended as provision of a facility to persons participating in our coming to watch the tournaments in order that these may run successfully. It appears that the test matches were held in the Stadium of the club. It also appears that the club was making a large income therefrom. Of the 17 matches held there during the period, each match meted nearly 2 lakhs. Even so, it was held that holding of test matches or the catering provided in the stalls at the time of these matches was a subsidiary purpose to the promotion and encouragement of the persons whose interest in the game of cricket was not systematic and consequently was not in the nature of carrying on trade or business but were activities in the promotion of the game of cricket. The income derived from all these activities was incidental which income was later utilised for the purpose of fulfilling its other objects as incorporated in the Memorandum of Association.

15. After setting out and examining in detail the object and the purpose for which the club came into existence and the stadium was constructed and used, Bhargava, J. at page 613 observed on behalf of the Court :

> "In these circumstances we are not inclined to accept the submission made on behalf of the workmen that this activity by the club is an undertaking in the nature of trade or business. It is, in fact, an activity in the course of promotion of the game of cricket and it is incidental that the Club is able to make an income on these few occasions

> which income is later utilised for the purpose of fulfilling its order objects as incorporated in the Memorandum of Association."

It was also sought to be contended that the Club was registered under the Indian Companies Act, 1913, unlike the Madras Gymkhana Club and consequently the effect of this incorporation in law was that the club became an entity separate and distinct from its members, so that, in providing catering facilities, the club, as a separate legal entity, was entering into transactions with the members who were distinct from the club itself. This contention was not considered to be of importance even by the Tribunal itself with which this Court agreed on the ground that, what has to be seen is the nature of the activity in fact and in substance. In fact it was found that the club was not constituted for the purposes of carrying on business; there are no shareholders, no dividends are declared and no distribution of profits takes place. The admission to the club is by payment of admission fee and not by purchase of shares. Even this admission is subject to balloting. The membership is not transferable like the right of shareholders and the expulsion of the member under certain circumstances when he looses his right are features which never exist in the case of a shareholder holding shares in a Limited Company. In these circumstances the club was not considered as a separate legal entity as a Limited Company carrying on business.

16. The Madras Gymkhana Club (supra) as well as the Cricket Club cases (supra) were again considered by a larger Bench of six Judges of this Court in Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi, [(1971) 2 SCR 458 : 1970(1) SCC 735 : AIR 1970 SC 1407.] when the previous case-law was also reviewed. In that case this Court was considering whether Safdarjung Hospital, the Tuberculosis Hospital and the Kurji Holy Family Hospital were industry for the purposes of reference under Section 10(1)(d) of the Act.

17. In the Safdarjung Hospital case (supra) the Hospital Mazdoor Sabha case (supra) again loomed large because on the facts and the circumstances of that case the principles stated therein would have been applicable, if it was considered to be good law. But as earlier stated certain criteria and tests which were laid down in the Gymkhana case (supra) were logically extended to this case and in doing so the extreme view taken in the Hospital case (supra) was held to and in doing so the extreme view taken in the Hospital case (supra) was held to be not justified. What was considered in the Safdarjung case (supra) was "whether a hospital can be considered to fall within the concept of industry in the Industrial Disputes Act and whether all Hospitals of whatever description can be covered by the concept of only some hospitals under special conditions".

18. We have earlier set out the relevant passages in the Gymkhana case (supra) which laid down the criteria for determining the various activities which would determine whether the undertaking is an industry within the meaning of Section 2(j). Hidayatullah, C.J., in the Gymkhana case (supra) after referring to the two notions of the definition - the first part dealing with what it means and the second part with what it includes, summed up the conclusion in the following passage at Page 753-754 :

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

19. The learned Chief Justice thought that the above observations in the Gymkhana Club case (supra) needed to be somewhat qualified. It was pointed out by a reference to the definition of industry in Section 4 of the Commonwealth Conciliation and Arbitration Act of Australia that the two definitions were worded differently though the purport of both is the same. It was, however, thought that it was not necessary to view each definition in two parts. At Page 184 it was observed :

> "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 who follow one of the avocations detailed for workmen. The definition no doubt seeks to define 'industry' with reference to employer's occupation but includes 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 occupation."

After setting out the passages to which references have been made while examining the Gymkhana (supra) it was again pointed out that when Lord Wright said that 'trade' is a term of widest scope, it was true but "the word as used in the statute must be distinguished from professions although even professions have 'trade unions'. The word 'trade' includes persons in a line business in which persons are employed as workmen". Similarly it was pointed out that "Business too is a word of wide import. In one sense it includes all occupations and professions. But in the collection 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".

20. What is meant by material services, was also explained thus at page 187 :

> "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..... Material services involve an activity carried on through co-operation between employers and employees to provide the community with the use of something...., but the emphasis is not on what these men do but upon the productivity of a service organised as an industry and commercially valuable.... It is the production of this something which is described as the production of material services."

21. A contention was however urged that the word 'trade' and 'workmen' ought not to be given a narrow meaning but it was pointed out that the reasons for some of the cases decided by this Court lay in the kind of establishment which were sought to be explained and elucidated. At page 188 the following observations are worthy of note :

> "It therefore, follows that before an industrial dispute can be raised between employers and their employees or between employers and employers or between employees and employees in relation to the employment or non-employment or the terms of employment or with the conditions of labour of any person, there must be first established a relationship of employers and employees associating together, the former following a trade, business, manufacture, undertaking or calling of employers in the production of material 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."

22. Though it was considered unnecessary to refer to the earlier cases as they were all referred to in the Gymkhana Club case (supra), the following propositions which were deduced from them have been summed up at page 189 :

> "..... before the work engaged it 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."

23. Thereafter the Hospital Mazdoor Sabha case (supra), was closely considered and while doing so it was said that "if a hospital, nursing home or dispensary is run as a business in a commercial way there may be found elements of an industry there. Then the hospital is more than a place where persons can get treated for their ailment. It becomes a business". It was further pointed out that in the Hospital Mazdoor Sabha case (supra), hospitals run by Government and even by a private association, not on commercial lines but on charitable lines or as part of the functions of Government Department of health were held included in the definition of industry. The reason given was that the second part of the definition of industry contained an extension of the first part by including other items of industry. But this, the learned Chief Justice said was not correct because "the first and the second parts of the definition are not to be read in isolation as if they were different industries but only as aspects of the occupations of employers and employees in an industry. They are two counterparts in one industry. The case proceeds on the assumption that there need not be an economic activity since employment of capital and profit in motive were considered unessential. It is an erroneous assumption that an economic activity must be related to capital and profit-making alone. An economic activity can exist without the presence of both. Having rejected the true test applied in other cases before, the test applied was 'can such activity be carried on by private individuals or group of individuals ?' Holding that a hospital could be run as a business proposition and for profit, it was held that a hospital run by Government without profit must bear the same character. With respect, we do not consider this to be the right test. That test was employed to distinguish between the administrative functions of Government but it cannot be used in this context. When it was emphasised in the same case that the activity must be analogous to business and trade and that it must be productive of goods or their distribution or for producing material services to the community at large or a part of it, there was no room for the other proposition that privately run hospitals may in certain circumstances be regarded as industries".

24. It may be noticed that in the Safdarjung Hospital case (supra), apart from the case of Safdarjung Hospital two other appeals were being considered, namely one relating to Tuberculosis Hospital and the other to Kurji Holy Family Hospital. In so far Safdarjung Hospital is concerned, it was held that it was "not embarked on an economic activity which can be said to be analogous to trade or

business. There is no evidence that it is more than a place where persons can get treated. This is a part of the functions of Government and the Hospital is run as a Department of Government. It cannot therefore, be said to be an industry". The Tuberculosis Hospital was said to be wholly charitable and a research institute the dominant purpose of which was research and training but as research and training cannot be given without beds in a hospital the hospital was being run. The treatment was therefore, part of the research and trade. As such it was not considered to be an industry. The object of the Kurji Holy Family Hospital was found to be entirely charitable. It also carries on work of training, research and treatment and the distribution of surplus profit if any was prohibited. That was also not considered to be an industry. We refer to these two cases particularly because a good deal of argument has been addressed to us in support of the proposition that where the object of an institution is for a charitable purpose that would exclude its activity from coming within the definition of an industry under Section 2(j); that in the two particular instances the hospitals were charitable institutions and therefore it was contended that merely on that ground they were not an industry. In these three cases it was found that none of them carry on an economic activity analogous to trade or business. The criteria that in the two latter hospitals the object was charitable does not appear to have been the sole test for concluding that they were not industries. In one case the dominant activity was research and training which necessarily involved treatment also. In the other case though the activity it carried on was training, research and treatment, the distribution of surplus as profit was prohibited. The cumulative effect of these activities and the nature of such activities determined the question whether these institutions were an industry or not, not that because their respective objects were charitable, that alone was considered to be the criteria for not considering it as an industry.

25. The cases of charitable object which were referred to by the learned advocate for the appellant were concerned with the direct application of Section 4, sub-section 3(i) of the Income-tax Act, 1922 (hereinafter referred to as 'the Income-tax Act') which exempted income derived from property held under Trust or other legal obligation wholly for charitable purpose on the basis that charitable purpose included relief of the poor.... and the advancement of any other object of the public utility. The definition had therefore to be satisfied by the character of the Association and its activities. No doubt the words advancement of other purposes of general public utility in the definition of section were very wide and were applied in Re Trustees of Tribune Press, Lahore v. The Commissioner of Income-tax, [1939 LR 66 IA 241.] as their Lordships latter explained in All India Spinners' Association of Mirzapur, Ahmedabad v. Commissioner of Income-tax, [7 IA 159.] "without any very precise definition to the production of the newspaper in question under the conditions fixed by the Testator's will". The Privy Council had in the Tribune case (supra), stated "that the object of the paper may fairly be described as 'the object of supplying the province with an organ of educated public opinion' and that "it should prima facie be held to be an object of general public utility". These words their Lordship thought in the All India Spinners' Association case (supra), excluded the object of private gain, such as an undertaking for commercial profit, though all the same it would subserve general public utility.

26. In the Tribune case (supra), the printing and publication of the newspaper which was not carried on for private profit to any person was held by the Privy Council to be a charitable object of general public utility although the newspaper charged its readers and advertisers at the ordinary commercial rates. It would therefore appear that a commercial organisation run for profit is not necessarily excluded from the exemption under the Income-tax Act if its object was the accomplishment of a charitable purpose. In the All India Spinners' Association case (supra), Lord Wright explained the difference between the English law of charity which was largely influenced by Lord Macnaghten's definition in Commissioners for Special Purpose of Income-tax v. Pemsel, [1891 AC 531-583.] and

Section 4(3)(i) of the Income-tax Act. Under the English law decisions on "the law of charities are not based on definite and precise statutory provisions" but were spelled from a list of charitable object contained in the preamble of Act of 43 Elizabeth (1601) and in doing so they made liberal use of analogies, so that the modern English law can only be ascertained by considering a mass of particular decisions often difficult to reconcile. The difference in language of the definition given by Lord Macnaghten of other purposes beneficial to the community, and the inclusion in the Indian Act of the word 'public' gives a wider scope to the Indian Act. The Indian Act it was said gives a clear and succinct definition which must be construed according to its actual language and meaning and consequently English decisions have no binding authority on its construction and though they may sometimes afford help or guidance cannot relieve the Indian Courts from the responsibility of applying the Act; in the particular circumstance that emerge under conditions of Indian life. In the All India Spinners' Association case (supra), also the activity was a commercial activity from which profits were derived, and since the primary object was charitable namely relief to the poor that was considered prima facie to satisfy the statute. It was also held that there was good ground for holding that the purpose of the Association included the advancement of other general public utility which words though wider were left by their Lordships for consideration on other occasions.

27. It is true that in the Commissioner of Income-tax, Madras v. Andhra Chamber of Commerce, [(1965) 1 SCR 565.] this Court held that the main object of the Chamber of promotion of trade and commerce was an object of general public utility, as not only the trading class but the whole country would benefit by it. What was sought to be contended there was that the benefit must include all mankind which was not considered to be necessary for satisfying the definition in Section 4(3)(i) of the Income-tax Act. But it was sufficient, if the intention was to benefit a section of the public as distinguished from specified individuals. This case is not an authority for the proposition that if the activity is commercial though the object charitable, it does not satisfy the definition under Section 4(3)(i) of the Act. Even the decision of the Andhra Pradesh High Court in the Hyderabad Stock Exchange Ltd. v. Commissioner of Income-tax, A.P., [1967 ITR (66) 195.] to which one of us (Jaganmohan Reddy, J.) was a party took the matter no further. It was held there following the Andhra Chamber of Commerce case (supra), that the Hyderabad Stock Exchange case (supra), served an object of general public utility which was not only to further the interests both of the brokers and dealers but also of the public interested in securities to assist, regulate and control the trade in securities, to maintain high standards of commercial honour and integrity, to promote and inculcate honourable practices, trade and business etc. In the Commissioner of Income-tax, West Bengal v. Bengal Home Industries Association, [(1963) 48 ITR 181.] Mitter and Ray, JJ., as they then were, referred to the three principles deduced in Commissioner of Inland Revenue v. City of Glasgow Police Atheletical Association, [(1953) 34 TC 76.] by Lord Cohen from English cases and applied them to the facts of that case to ascertain whether any Association formed to promote and develop Home Industries, arts and crafts in the Presidency of Bengal was a public charitable institution as such entitled to exemption under Section 4(3)(i) of the Income-tax Act. It is contended by the learned advocate for the appellant that the Andhra Chamber of Commerce case (supra), illustrates the first principle, the Bombay Panjrapole v. The Workmen and Another, [1971(3) SCC 349.] illustrates the second principle and Ahmedabad Textile Research Association case (supra), the third principle. What the House of Lords were considering in the case of City of Glasgow Police Atheletical Association (supra), was where an Association has two purposes one charitable and the other not and if the two purposes are such and so related that the non-charitable purpose cannot be regarded as incidental to the other, the Association is not a body established for charitable purposes only.

28. We had occasion to point out during the course of the argument of the learned advocate for the

appellant that the cases under the Income-tax Act are of little assistance in determining whether an organisation, association or undertaking is an industry notwithstanding the fact that its main object is charitable. There is no doubt and it has not been denied by the learned advocate for the respondent that the object of the Federation and even for that matter if it is the main object, subserves general public utility and therefore charitable. But nevertheless its activity may be commercial so as to satisfy the definition of an 'industry' as explained and elucidated in the latter cases of this Court particularly that in the Safdarjung Hospital case (supra). We could therefore envisage an institution having its aims and objects charitable, and yet its activities could bring it within the definition of industry in 2(j). The Tribune and the All India Spinners' Association cases (supra), would have illustrated this if a question had arisen under the Act. In so far as a decision under the Act is concerned that is illustrated by the case recently decided in the Bombay Panjrapole case (supra), to which one of us (Jaganmohan Reddy, J.) was a party. In that case the Bombay Panjrapole was undoubtedly brought into existence for charitable purposes namely for establishing a Panjrapole for keeping of stray, sick and infirm cattle and other animals and for protecting their lives. This endowment had been made as long ago as October 18, 1834, to put a stop to the practice of killing of stray dogs by the sepoys of the East India Company and subsequently several deeds were executed one in 1850, another in 1871 and ultimately it was declared an infirmary under the Prevention of Cruelty to Animals Act (IX of 1890). The activities of the Panjrapole expanded considerably over the years and it had branches, apart from Bombay at three other places. The expansion of these activities resulted in its selling milk on a large scale and earning huge profits. While no doubt none of the cattle was sold and except and perhaps a stud bull or two, none were purchased. Nevertheless it was held that the Managing Committee of the Trustees had decided sometime early to upgrade the infirm cattle and rear them into good animals so as to get good and pure milk for the inmates of the Panjrapole. In fact the upgrading was to such an extent that the milk yielded was far in excess for the inmates of the Panjrapole. Although the sale proceeds of the milk were never utilised nor meant for the benefit of the donors or trustees, the very production of it in such large bulk wholly unrelated to the needs of the sick cattle showed that the institution was pursuing an activity with the central idea of obtaining a steady income therefrom. Mitter, J., who spoke for the Court observed :

> "In our view, the facts justifiable lead to the conclusion that the Institution deliberately diversified its objects from only tending to the sick, infirm or unwanted cattle by adopting the policy of keeping cattle not merely for their own sake but for the sake of improving the cattle population committed to its care with an eye to serve human beings by making large quantities of good milk available to them and thereby getting an income which would augment its resources. It pursued its policy just as any dairy owner would by having a few good quality bulls to impregnate the cows and thereby ensuring steady production of milk and also improve the quality of progeny."

29. On these facts and after considering the several decisions referred to by us earlier as also the cases of Lalit Hari Ayurvedic College Pharmacy v. Its Workers Union [AIR 1960 SC 1261. : (1960) 1 Lab LJ 250.]; The Workmen Employed in the Madras Panjrapole v. Madras Panjrapole, [(1962) 2 LLJ 472] it was held that it was an industry, having regard to the various activities which it carried out particularly having regard to the fact : (a) that the value of the milk supplied to the sick and infirm cattle was infinitesimal compared to that sold in the market; (b) The expenses incurred in connection with the treatment of sick and infirm animals was also negligible compared to the total expenses of the institution; (c) The number of men employed for such treatment was very small at all times. The mere fact therefore that the Panjrapole never purchased milch cows and never

purchased stud bulls except for one made no difference to the question as to whether their activity of maintaining cows and bulls could only be considered as an investment.

30. A reference was also given to Section 32(5) of the Payment of Bonus Act in which Chambers of Commerce and certain other organisations with charitable purpose were excluded as showing that the Legislature wanted to exempt them and this indicated that they are not industries. We do not think any such inference would arise nor can this provision be of help in the construction of Section 2(j) of the Act. There is in our view force in the contention of the learned advocate for the respondent that the exclusion of certain undertakings was a legislative policy either because they would have been included otherwise by the application of that Act to them or by way of abundant caution.

31. It appears to us that the tests for determining whether a dispute is an industrial dispute, or not have been enunciated and the principles crystallised as a result of the several decisions of this Court which is what are applicable to this case. There is, therefore, no warrant to allow any other element to be added to the criteria laid down for determining what an industry is. In our view the linch-pin of the definition of industry is to ascertain the systematic activity which the organisation is discharging namely whether it par takes the nature of a business or trade, or is an undertaking or manufacture or calling of employers. If it is that and there is co-operation of the employer and the employee resulting in the production of material services, it is an industry notwithstanding that is objects are charitable or that it does not make profit or even where profits are made, they are not distributed among the members.

32. It now remains to be seen whether the Federation is an industry within the meaning of Section 2(j). The objects of the Federation are set out inter alia in clauses 3(a) to (k) of the Memorandum of Association of which the more significant are clauses 3(a) and (e) to (k). These are to promote Indian business in matters of inland and foreign trade, transport, industry and manufacture, finance and all other economic subjects and to encourage Indian banking, shipping and insurance; to promote support or oppose legislation or other section effecting economic interests and in general to take the initiative to assist and promote trade, commerce and industry, to provide for arbitration in respect of disputes arising in the course of trade, industry, or transport and to secure the services of trained technical and other men to that and, if necessary or desirable to conduct, undertake the conduct of and participate in national and international exhibitions, to set up museums or show-rooms, to exhibit products of India in other countries and to participate in such activities, and to attain those advantages by united action which each member may not be able to accomplish in its separate capacity. In furtherance of these objects the Federation publishes a Fortnightly Review, organised two exhibitions in which huge profits were made, though no doubt in collaboration with the Government. It has constituted Tribunals for Arbitration. It is claimed in the Brochure issued by the Federation under the title 'Organisation and Functions' that membership of Federation confers certain rights and privileges, such as for instance it "endeavours to take up with the concerned authorities the specific difficulties experienced by members in their day to day business." It has entered into arbitration agreement with America, Russia, German Democratic Republic, Poland and Hungary for the purposes of having the disputes of claims arising out of or relating to contracts between nationals of India and the country concerned for being settled by arbitration. It promotes India's exports and economic development. It undertakes publication of periodicals for the benefit of the businessmen, big or small; it brings out Fortnightly Review in which there is a section for Trade enquiries of special interest to importers and exporters. This facility is also thrown open to the non-members who can subscribe to the Bulletin though it is sent free to all the constituents of the Federation. A cyclostyled publication entitled "Export News" is also issued every fortnight and

gives general hints to the exporters as to how to promote their exports. It appears from the report of Proceedings of the Executive Committee for the year 1965, that more specific issues were taken up direct with the Department of Government concerned relating to export performance and shortages of imported raw materials, components and machinery with a view to alleviate difficulties in the case of specific products. It also takes up matters relating to the grant for more facilities abroad, introduction of concessions such as Railway freights, etc. Among important ad hoc matters taken up were cargo seized by Pakistan in the course of hostilities during 1965. It also facilitates the resolution of various difficulties in respect of foreign exchange and export promotion which are being experienced by the trade in respect of foreign exchange allocation for export promotion purposes and made several suggestions regarding granting of foreign exchange for business facilities abroad and the need to avoid delay in sanctioning foreign exchange, increase in existing scales of allowances, liberal allocation of the after-sales service. It took up the cause of the established exporters other than manufactures who were barred from entering into export trade in ground-nut, oil-cakes. It sponsored the cause of the exporters of precious stones to allow reasonable time for submission of their reports and calling back the consignments if, there was no sale. In Company Law matters also it sponsored the cause of the various Companies and the difficulties that they were encountering. It would appear that on the request of Goa Mineral Ore Exporters' Association, the Committee requested the Government to give the matter sympathetic consideration. It also took up cases of the contractors bills where there was inordinate delay in payment of contractor bills for lack of funds. In the report for 1964, it was stated that where in certain cases import licences were issued subject to the condition that the validity of the licences depended on the production of the Income-tax clearance certificate in spite of the fact that the applicant had quoted the registered number in his income-tax verification, the Federation requested the Chief Controller of Imports and Exports to discontinue the practice in future. Where the import policy for the year 1964-65 allowed 5% quota for silk bolting cloth to established importers, representation to the Chief Controller of Imports and Exports was made for this cloth to be granted to flour millers direct whenever they apply for it, if necessary on ad hoc basis. The case for freight concession for iron ore exported from Rajasthan for extending it to high grade ore as well, was also taken up. It was further pointed out that the Company management and other concerned with Company law have frequently complained of many practical difficulties in complying with the provisions of the Company Act, rules etc. In order to help the Federation constituents in such matters and provide necessary service to them the Federation has been maintaining a separate division namely the Company Division to which members were requested to forward their problems and difficulties. Principal bodies were also requested to advise their constituents in regard to the services offered by the Federation.

33. These extracts have been given in some extenso to show that the Federation carries on systematic activities to assist its members and other businessmen and industrialists and even to 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 are material services which are not necessarily confirmed to the illustrations giver by Hidayatullah, C.J., in the Gymkhana (supra), by way of illustration 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 Section 2(j) of the Act.

34. Now coming to the merits of the case we find little substance in the contention of the Federation that the respondent had issued legal notices to the International Chamber of Commerce with a view to bring discredit to the Federation - its employer. The charge of misconduct that was framed against the respondent was that he having acted in a manner inconsistent with his duties and obligation as an

employee of the Federation he caused to be addressed without any justification copies of the letters to the International Chamber of Commerce "with a view of bring and/or capable of bringing disrepute to the Federation in the eyes of the International Chamber of Commerce. The Enquiry Officer in the domestic enquiry held that having regard to the emphatic assertion of the respondent that he had no intention to bring disrepute to the Federation in any way and that he was only trying to get his legitimate dues "it is not necessary to analyse the exact intention, but the effect has been to convey to the International Chamber of Commerce a low impression about the Federation and thereby to bring down the prestige of the Federation in the eyes of the International Chamber of Commerce". In spite of this finding the Enquiry Officer found that the respondent's action was clearly subversive of discipline and in his opinion deserved to be so treated. The Tribunal as we have noticed earlier found that this did not amount to misconduct which finding in our view is justified on the evidence. It appears from the statement of G. C. Das, Accountant of the Federation that it was the President of the Indian National Committee who was incharge of organising the I.C.C. Congress and that all payments were made from the special account of '20th Congress of the I.C.C., F.I.C.C.I.' It is, therefore, clear that it is not the Federation that conducted the Congress but another organisation which was brought into being for that purpose. It is this Committee namely the Indian National Committed which employed the respondent and in the circumstances there is little justification for taking umbrage when the respondent in spite of his demand to settle his claim was not given satisfaction if he issued a notice to all the three organisations namely the Federation, the Indian National Committee and the International Chamber of Commerce and Industry. At any rate the fact that the respondent did not intend to cast any aspersion against the Federation became also evident from the manner in which he tendered his apology and said that he never had any such intention. Notwithstanding this apology the punishment of discharge for a workman who has served the Federation for 12 years without any cause for complaint and had worked for 40 days receiving overtime payment for only seven days was far in excess of what he deserved - even if he was considered to be guilty of any misconduct. It is not denied that there are no standing orders specifying the misconduct which would justify dismissal and what misconduct would justify other disciplinary action. In these circumstances it is open to the Tribunal to go into the question whether the punishment was disproportionate to the misconduct complained of as to amount to victimisation. In W. M. Agnani v. Badri Dass and Others, [(1963) 1 LLJ 634.] it was so held by this Court. It was also held in Hind Construction and Engineering Co. Ltd. v. Their Workmen, [(1965) 2 SCR 85 : AIR 1965 SC 917.] that although it is a settled rule that the award of punishment for misconduct is a matter for the management to decide and if there is justification for punishment imposed, the Tribunal should not interfere; but where the punishment is so disproportionate that no reasonable employer would ever have imposed it in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimisation or unfair labour practice. In view of the fact that the domestic Tribunal acted on no evidence at all because it was found that the intention with which the respondent had issued the notices to the International Chamber of Commerce and Industry could not be ascertained, the Tribunal was justified in allowing evidence to be led and on that evidence to come to the conclusion that the termination of service was wrong. We cannot help feeling that the Federation had made a mountain out of a mole hill and made a trivial matter into one involving loss of its prestige and reputation. In this view the appeal is dismissed with costs.

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