CALCUTTA HIGH COURT

Brij Mohan Bagaria

Vs.

N.C. Chatterjee

Matter No. 209 of 1957

(D.N. Sinha, J.)

27.02.1958

ORDER

D.N. Sinha, J.

1. The petitioner Brij Mohan Baga-ria is an attorney practicing in this court. He lias been practicing as such for the last 18 years and at the present moment has a large establishment at his office situate at No. 6, Old Post Office Street, consisting of 6 qualified assistants, 2 articled clerks, about 42 ordinary clerks and 14 other described as 'subordinate staff. I mention this because in a reference made by Government of West Bengal, to which I shall presently refer, it has been stated that an industrial dispute exists between 'Messrs. B. M. Bagaria, 6, Old Post Office Street, Calcutta and their employees as represented by B. M. Bagaria's Employees' Union, 45, Bow Bazar Street, Calcutta" and in an order made by the First Labour Court the learned Judge has described' the petitioner as a 'company'. In this application, the petitioner has alleged that he is an attorney practicing in this Court and the employees are his employees which fact is not denied. It appears, however, that the employees of the petitioner have grouped themselves into an Union known as 'B. M. Bagaria Employees Union' and have been conducting themselves as if the calling of a solicitor is an 'industry' as defined in the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act'). In or about November, 1956 the Union submitted a Charter of Demand, demanding increment of "basic salary, dearness allowance etc. The only affidavit-in-opposition filed herein is by the Secretary of the Union and' it is stated therein that the Charter of Demand was issued because, while the business of the petitioner was a flourishing one, the basic salary paid to the clerical and subordinate staff fell for below the middle class and working class living index respectively and did not even reach the bare subsistence level. The. petitioner alleges that the employees, by their concerted action, tried to create a deadlock in the office and employed pressure tactics and even resorted to threats of assault. This, of course, is not admitted on behalf of the Union. It is, however, a fact that on 18-3-1957 the employees resorted to a pen-down strike. Thereupon, the petitioner served charge-sheets on some of the employees and after enquiry terminated the services of some of them. According to the Secretary of the Union, this was an instance of victimisation for participating in a lawful pen-down strike which was conducted in a manner permitted by law. The Union approached the Labour Department of the Government of West Bengal and conciliation proceedings were started. It is alleged that the

attempts to settle the matter by concilation failed. On 10-7-1957 an order was made by the Government of West Bengal under Section 10 of the Act, referring the alleged industrial dispute for adjudication by a Labour Court constituted under Section 7 of the said Act. The relevant part of the order of reference is set out below:

> "Where an industrial dispute exists between Messrs. B. M. Bagaria, 6 Old Post Office Street. Calcutta and their employees as represented by B. M. Bagaria's Employees Union 45 Bow Bazar Street, Calcutta 12 relating to the under-mentioned issues in matters specified in the second schedule of the Industrial Disputes Act 1947 (XIV of 1947)..... the Governor is pleased hereby to refer the said dispute to the First Labor Court.....for adjudication....."

ISSUES :

> "1. Is the dismissal of Sri Debendra Nath Mitra and of 16 other workers (as per list enclosed herewith) by the management justified?
> 2. What relief are they entitled to?"

2. The petitioner thereupon made an application sometime in August 1957 before the First Labor Court for its decision on the preliminary point as to whether the petitioner was carrying on an 'industry' and, therefore, whether his employees were workmen as defined in the Act and whether the alleged dispute between the petitioner and his employees constituted an industrial dispute within the meaning of that Act, which could be referred to adjudication under Section 10 of the Act. The said court took it up as a preliminary point and by its judgment dated 10-9-1957 has decided against the petitioner and has held that the instant dispute is an industrial dispute and that the order of reference was valid- This Rule was issued on 28-11-1957 upon the respondents to show cause why the order of reference and proceedings taken there under should not be quashed by a writ in the nature of certiorari and why the First Labor Court, respondent No. 1, should not be restrained by a writ of prohibition from proceeding to entertain the reference or decide the same.

3. It is obvious that the point that is involved in this case is as to whether the calling of a solicitor can be characterized as an 'industry' within the meaning of the Industrial Disputes Act and whether the employees of the petitioner can be described as 'workmen' within the meaning of the said Act and whether the alleged dispute between the petitioner and his employees can be said to be an industrial dispute, such as can be the subject-matter of a reference under Section 10 of the Act. It does appear that the parties have been proceeding to a certain extent upon the footing that the Industrial Disputes Act applies, otherwise I do not see the basis for some of the happenings enumerated above. However, the question has now come to a focus and must be decided. Section 2 (j) of the said Act defines the word 'industry' and means : any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. The word 'industrial dispute' has also been defined in Section 2(k) of the Act, but, of course, it is based upon the definition of 'industry' because there must exist an industry before there can arise in it an industrial dispute which inter alia includes any dispute or difference between the employers and workmen which is connected

with the employment or r.on-employment or the terms of employment or with the conditions of labour of any person. It thus appears that the definition of the word 'industry' in the Act is very wide. It includes any business or calling. If we are to decide the matter literally, there can be no doubt that the profession or business of a solicitor is a calling. Similarly, the profession of a doctor or a barrister or a pleader would be a 'calling' and indeed no profession or business could be said to be outside its scope. The question is how are we to construe the provisions of this Act? A similar problem arose in a case in which Section 2 (oo) of the Act was involved. In the case of *Hari Prosad v. A. D. Divelkar*[1], the question arose as to what meaning was to be given to the word 'retrenchment'. That word has been defined in the Act to mean the termination by the employer of the services of a workman for 'any reason whatsoever', otherwise than as a punishment inflicted by way of disciplinary action with certain exceptions. The question was whether if a business had been *bona fide* closed, then could there arise any question of retrenchment of the staff? It was argued' that the words "for any reason whatsoever' would include such a state of affairs. Indeed, if literally construed, it would. S. K. Das, J., said as follows:

> "There is no doubt that when the Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the Statute. We are not concerned with any presumed intention of the legislature; our task is to get at the intention as expressed in the Statute....., when a portion of the staff or labour force is discharged as surplusage in a running or a continuing business, the termination of service which follows may be due to a variety of reasons; e.g., for economy, rationalization of in-, dustry, installation of a new labour saving machinery, etc., the legislature in using the expression 'for any reason whatsoever' says in effect:
> 'It does not matter why you are discharging the surplus; if the other requirements of the definition are fulfilled, then it is retrenchment'..... In the absence of compelling words to indicate that the intention was even to include a *bona fide* closure of) the whole business, it would, we think, be divorcing the expression altogether from its context to give it such a wide meaning as it is contended for by learned counsel for the respondent'".

4. The learned Judge relied on two earlier decisions of the court, the first being *P. S. Mills Ltd. v. P. S. Mills Mazdoor Union*[2], wherein it was held that it could not be doubted that the entire scheme of the Act assumes that there was in existence an industry and then proceeds to provide for various steps being taken when a dispute arose in that industry. The second decision relied on was, *Messrs. Burn and Co. Ltd., Calcutta v. Their Workmen*[3], where it was held that the object of labour legislation was firstly to ensure fair terms to the workmen and secondly, to prevent disputes between employers and employees so that production might not be adversely affected and the larger interests of the public might not suffer. In view of these observations, it was held that it would be against the entire scheme of the Act to give the definition clause relating to retrenchment such a meaning as would include within the definition, termination of service of all workmen by the employer even when the business itself ceases to exist. In other words, it was held that where a Statute defines a certain expression, then if the expression can be given an extended meaning or a restricted one, the proper rule of interpretation would be

[1] AIR 1957 SC 121
[2] AIR 1957 SC 95
[3] AIR 1957 SC 38

to consider the ordinary use of that expression in the context of the Act and the scheme thereof. Therefore, when 'industry' has been defined to include all callings, it is necessary to consider the context and the scheme of the Act to discover whether it was intended to include all callings within its amplitude or callings of a particular description only. It will, therefore, be relevant to investigate as to what is the ordinary meaning of 'industry' and what is the scheme of the Act and its context. In doing so, we cannot escape looking into cases decided in foreign countries which have passed through the birth-pangs of an industrial revolution, such as we are going through at the present moment. One of the leading cases on the subject, which has always been followed' and has been quoted with approval by the Supreme Court, is a decision of the High Court of Australia : *The Federated Municipal and Shire Council Employees' Union of Australia v. Melbourne Corporation*[4]. The very same question arose there, viz., what was the meaning of the word 'industrial dispute". It was stated at p. 554 as follows :

> "Approaching the construction of that placitum to these considerations, what is the material upon which the mind of the Court should operate in order to mark out the ambit of the expression 'industrial dispute'? We apprehend that mere etymology is misleading. The claimant says that 'industrial' means simply relating to 'industry' in the abstract, whether it be in the exercise of trade, commerce, science or learned professions. Nor can the matter be determined by any theory of convenience or balanced considerations framed by a Judicial Tribunal either on its own views of fairness and appropriateness or on the speculation of economic or social thinkers.....
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> In Australia in 1900 the language of industrialism was precisely that of England. Some advance, it is true, had been made here in remedial legislation beyond that of the Imperial Parliament but the industrial structure, its terminology and its conflicts were similar and the evils to be guarded against or cured were identi Cal. The very expression 'industrial dispute' was in use in both countries and meant the same language in protean form. From a careful examination of English Official Records from 1894 to 1914 and the perusal of Works of Economic and Municipal History, as well as the common knowledge of Australian History, the conclusion is reached that the respondent's contentions are not well-founded.
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> The concept may be thus forumlated : Industrial disputes occur when, in relation to operations in which capital and labour are contributed in co-operation for the satisfaction of human* wants or desires, those engaged in co-operation. dispute as to the basis to be observed, by the parties engaged, respecting either a share of the product or any other terms and conditions of their co-operation. This formula excludes the two extreme contentions of the claimant and the respondents, respectively. It excludes, for ins-stance, the legal and medical profession, because they are not carried on in any intelligible sense by the cooperation of capital and labour and do not come within the sphere of industrialism".

5. It was also held that in order to constitute an 'industrial dispute' it was not necessary that the undertaking in which the parties to the dispute were engaged should be an industry, trade or

business carried on for profit. A Municipal or Shire Council, Municipal Trusts or Municipal Corporations might come within the definition. The learned Judges

[4](1918-19) 26 Com. W. L. Rule 508(D)

have quoted Gomme on 'Principles of Local Government' p. 153 as saying that providing for cemeteries may be an industry. Professor Macgregor in his work, "The Evolution of Industry", p. 210, is quoted, as being of the opinion that post office and the coinage, even though nationalized, may be industries. In a House of Lords case *National Association of Local Government Officers v. Bolton Corporation*[5], it was held that a dispute as to the conditions of service of officers of a municipal corporation was a 'trade dispute'. Lord Wright said as follows:

> "Section 11 of the Act of 1919 shows that 'trade' is used as including 'industry' because it refers to a trade dispute in the industry of agriculture Some inference appears from the short titles. It is described as an Act to provide for the establishment of an industrial Court in connection with trade disputes. Trade and industry are thus treated as interchangeable terms. Indeed 'trade is not only in the etymological or dictionary sense but in legal usage a term of the widest scope. It is connected originally with the word 'trade' and indicates the way of life or an occupation. In ordinary usage it may mean the occupation of a small shopkeeper equally with that of a commercial magnate. It may also mean a skilled craft. It is true that it is often used in contrast with a profession. A professional worker is not ordinarily equally a tradesman....." A similar question arose and was decided in *D. N. Banerji v. P. R. Mukherjee*[6], In that case the question was as to whether an industrial dispute could arise between municipalities and their employees. Aiyer, J. said as follows:
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> "In the ordinary or non-technical sense, according to what is understood by the man in the street, industry or business means an undertaking where capital and labour co-operate with each other for the purpose of producing wealth in the shape of goods, machines, tools etc. and for making profits. The concept of industry in this ordinary sense applies even to agriculture, horticulture, pisciculture and so on and so forth. It is also clear that every aspect of the activity in which the relationship of employer and employee exists or arises does not thereby become an industry as commonly understood. We hardly think in terms of an industry when we have regard for instance, the rights and duties of master and servant, or off a Government and its Secretariat or the members of the medical profession working in a hospital. It would be regarded as absurd to think sol at any rate the layman unacquainted with advancing legal concepts of what is meant by industry would rule out such a connotation as impossible. There is nothing, however, to prevent a Statute from giving the word 'industry' and the words 'industrial dispute' a wider and more comprehensive import in order to meet the requirements of rapid industrial progress and to bring about in the interests of industrial peace and economy, a fair and satis- factory adjustment of relations between employers and workmen in a variety of fields of activity. It is obvious that the limited concept of what industry meant in early times must now yield place to an enormously wider concept so as to take in various and varied forms of industry, so that disputes arising in connection with them might be settled quickly without much dislocation and disorganization of the needs of society and in the manner more adapted to conciliation and settlement than a determination of the respective rights and

liabilities according to strict legal procedure and principles. The conflict between

[5](1943) AC 166

[6] AIR 1953 SC 58

capital and labor has now to be determined more from the stand point of status than of contract. Without such an approach, the numerous problems that now arise for solution in the shape of industrial disputes cannot be tackled satisfactorily and this is why every civilized Government has thought of the machinery of Conciliation Officers, Boards and Tribunals for effective settlement of disputes".

6. The learned Judge pointed out that municipalities carry out many functions which partake of the nature of an industry. It may and often does supply power and light to the inhabitants of a municipality and if such public utility services, when carried on by private companies or corporations, be industries, there is no reason why, if a statutory corporation took it up, it would cease to be an industry. The learned Judge further pointed out that the position would be different if the services rendered were of different kind, e.g., the running of a charitable hospital or dispensary for the aid of the poor. The learned Judge concluded that the definition in the Act included disputes that might arise between municipalities and their employees in branches of work that can be said to be analogous to the carrying out of a trade or business and left open the question whether disputes arising in relation to the purely administrative work fell within the ambit or not. It is this case which has been strongly relied upon by the respondents. I do not think, it has laid down any principle different from that laid down in the two cases referred to above. Indeed, the learned Judge relies on those cases for the purposes of his decision. All that the learned Judge has stated is that the concept of what constitutes industry or industrial dispute is a changing one. In view of such changing circumstances in the life of a nation, legislature can well include within such definitions matters which have hitherto been acknowledged to be beyond their meaning. But I am aware of no case where the calling of a doctor or a lawyer has been held to be an industry. Indeed in a recent case which has not yet been reported, the Supreme Court has held that the calling of a doctor would not come within such a definition. My attention has been drawn to a case decided by the Labour Appellate Tribunal *V. S. Marwari Hospital v. Its Workmen*[7], It was held there that a charitable hospital is to be included within the word undertaking in the definition of an 'industry' as defined under Section 2 of the Act. It is doubtful as to whether this decision is correct in view of the observations made by Aiyer, J. referred to above. The next case referred to is a Bench Decision of Bombay High Court - *Hospital Mazdoor Sabha v. State of Bombay*[8], The question there was as to whether the activity of Government in connection with a hospital, constitutes an; 'undertaking' within the meaning of the expression as used in the Act. Chagla C.J. said as follows:

> "Now, when we look at the definition of 'industry', it is not confined to an activity of a commercial character. Nor does it import necessarily a profit motive or the employment of capital. Industry is not only any business or trade or manufacture, but it is also an undertaking or calling of employers and no expression could have been used with a wider import and connotation than the expression 'undertaking'. Undertaking is nothing more than any work or project which a person might engage in. Work of project may have no commercial implications. It might not be engaged) in with the object of making profit. It might be engaged in from the motives of philanthrophy and even so it would be an

undertaking in the wider sense in which that expression is used in the definition of 'industry'". With respect,

[7]1952 Lab. A. C. 562
[8]1957-1 Lab. L. J. 55

I think that the learned Chief Justice was giving an interpretation to the word 'industry', far in excess of What has hitherto been accepted. The learned Chief Justice referred to the case of *Federated States School Teachers' Association, Australia v. The State of Victoria*[9], where it was held that the educational activities of the States do not constitute an industry. In that case Knox C.J. said as follows:

"Can it be said that the educational activities of the States constitute an industry? So far as the matter is one of fact, we would say that, they cannot. They bear no resemblance whatever to an ordinary trade, business or industry. They are not connected directly with or attendant upon, the production or distribution of wealth; and there is no co-operation of capital and labor in any relevant sense, for a great public scheme of education is forced upon the communities of the States by law".

Isaacs, J. however, differed from the majority decision and held that the running of services is as much a production of wealth as the making or manufacturing of commodities.

7. In the case of *Bengal Club Ltd. v. Santi Ranjan*[10], I had to consider whether the Bengal Club, a well-known club in Calcutta, could be said to be carrying on an industry. Relying upon an unreported decision of the Court of Appeal in the case of *Indian Paper Pulp Co. Ltd. v. The Indian Paper Pulp Workers' Union*, I held' that it was an industry. The reason was that a club of this description had its business side. For example, it provided food and drink and accommodation to its members and also carried on the business of an eating house or catering.

8. From the above cases, the following principles can be deduced :

1. When the Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned : with any presumed intention of the legislature", Our task is to get at the intention as expressed in the statute.

2. But an expression even though defined in the statute must be read in its context. It is true that an artificial definition may include a meaning different from, or in excess of, the ordinary acceptation oil the word which is the subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning was intended.

3. But in considering the ordinary meaning of a word, we have to read it in the context of the particular statute which defines it, the scheme of the statute and the particular evil which the statute is intended to remedy.

4. An industrial dispute occurs when, in relation to operations in which capital and labour are contributed in co-operation for the satisfaction of human wants or desires, those,

engaged in co-operation, dispute as to the basis to be observed, by the parties engaged, respecting either a share of the product or any other terms or conditions of their co-operation.

5. In order to constitute an industrial dispute it is not necessary that the undertaking in which the parties to the dispute are engaged should be carried on

[9](1928-29) 41 Com. W. L, R. 569

[10]60 Cal WN 856 : (AIR 1956 Cal 545)

for profit, or for the production of wealth or commodities.

6. An industry, which when carried on by private persons would be an industry, cannot cease to be so if it is carried on by the Government or by a statutory corporation.

7. Every aspect of activity in which the relationship of employer and employee exists or arises does not thereby become an industry as commonly understood.

8. There is nothing, however, to prevent a statute from giving the word 'industry' and the words 'industrial dispute' a wider and more comprehensive import in order to meet the requirements or rapid industrial progress.

9. The limited concept of what industry meant in early times must now yield place to an enormously wider concept so as to take in various and varied forms of industries into consideration.

10. Previously it was thought that an industry must be connected directly or indirectly with the production or distribution of wealth and there must be co-operation of capital and labor. It has now been modified to the extent that the profit motive has been eliminated and the expression 'capital' is to be used in an extended sense.

9. Applying these principles to the facts and circumstances of the present case we find as follows : Under section 2 (j) of the Act, the word 'industry' means any undertaking or calling of employers. If it is given a very wide and literal meaning, then it will include every undertaking or any calling and would necessarily include that of a solicitor and his profession. But the word has to be construed in the context of the Act and the scheme of it. Can it be said that in such a case there is co-operation of labor and capital to produce wealth or services? In my opinion, however extended the meaning be given to the expression 'industry' or 'industrial dispute' or to the expression 'undertaking' or 'calling', we cannot include within their concept the case of an individual who carries on a profession, dependent upon his own intellectual skill. Every case must be decided upon its own facts. It cannot be said that an industry never includes person with intellectual skill. The question is slightly different. A doctor, if he carries on the business of a nursing home, may be said to be carrying on an industry or if he carries on a manufacturing laboratory, that would certainly be an industry, but in so far as he carries on his profession in the ordinary sense, namely, an avocation which is entirely dependent upon his own intellectual attainments and the skill of his hands, it has never been construed to be an industry, and. as such, it would not be governed by the provisions of the Industrial Disputes Act. Similarly, the profession of a lawyer, in so far as the normal avocations of lawyers are concerned which is dependent upon his own intellectual attainments and the skill with which he conducts the cases entrusted to him by his clients, that has never been construed as industry in the sense in which it is used in the Act. But a lawyer under certain circumstances may be carrying on an industry. For

example, if a lawyer carries on a business of publication of legal literature, that would be a different matter altogether. Similarly, in the case of an attorney, the normal avocations of an attorney are entirely dependent upon his own intellectual attainments and individual skill with which he acts for his clients. In doing so, he may employ many assistants and a large number of staff, but, that, to my mind, makes no difference, because it is not the largeness or smallness of the staff that is decisive of the question. But an attorney's profession can be turned into an industry under certain circumstances. For example, if he carries on an investment business. In the present case, however, it has nowhere been mentioned and it is not the case of the respondents that the petitioner carries on anything more than his normal avocation as an attorney. The issue was expressly raised before the Industrial Court and statements were filed, but nothing has been stated to suggest that the petitioner carries on his professional calling in any way excepting in the normal manner in which an attorney carries on his profession or calling. The only reason which is being suggested to describe his professional calling as an industry is that it is a 'cal-; ling' and callings have been included in the definition of the word 'industry' in the Act. It has further been stated that the petitioner employs a large number of persons. It is further stated that the staff put in clerical and/or manual work and are, therefore, workmen within the meaning of the Act. It is lastly stated that the petitioner earns his fees with the help of the labour and skill of his employees combined with, his own skill, labour and capital. In my opinion, these grounds are not sufficient to hold that the calling of the petitioner constitutes an industry within the meaning of the Act. As I have stated above, it is open to the legislature to include such callings within the scope of the Act. But until that is done, the calling of a solicitor carrying on his normal avocations cannot be called an industry within the meaning of the word as used in the Act.

10. That being so, there was neither an industry in the present case, nor an industrial dispute, nor can the employees of the petitioner be described as workmen as defined under the Act. The reference of a dispute between the petitioner and his employees never constituted an industrial dispute and, as such, could not be referred for adjudication under the Act in exercise of powers given under Section 10 of the Act.

11. The rule, must, therefore, be made absolute and the order of reference dated July 10,-1957, a copy of which is Ext. B to the petition, must be set aside and quashed and a writ of certiorari issued therefore quashing the said order and all proceedings had thereunder. There will Be a writ of prohibition directing the respondents not to proceed with the adjudication.

12. There will be no order as to costs.

Petition allowed.