BOMBAY HIGH COURT

National Union of Commercial Employees

Vs.

M.R. Meher

Special Civil Appln. No. 2789 of 1958

(Chainani Ag., C.J. and Shelat, J.)

20.11.1958

JUDGMENT

Chainani, Ag. C.J.

1. Respondents Nos. 2, 3 and 4 were partners in a firm of solicitors, Messrs. Pereira Fazalbhoy and Co. Originally there were three partners, Messrs. Pereira, Amin and Fazalbhoy. A partnership deed between them was executed on the 14th January 1929. This partnership came to an end in November 1925 when Mr. Amin retired from the partnership. A new deed of partnership was then executed between Messrs. Pereira and Fazalbhoy, respondents Nos. 2 and 3. They carried on the practice of solicitors in the name of Messrs. Pereira Fazalbhoy and Co. This partnership was dissolved on the 31st March 1946. From 1st April 1946 there were three partners, Messrs. Pereira, Fazalbhoy and Desai, respondents Nos. 2, 3 and 4. They carried on their practice as solicitors in the name of Messrs Pereira. Fazalbhoy and Co. until 15th November 1957, when the firm was dissolved. The second petitioner was employed as an assistant accountant in this firm. The first petitioner is a Trade Union and some of its members were the employees in the firm of Messrs. Pereira Fazalbhoy and Co., to which we will hereafter refer as the firm. In August 1957 the first petitioner wrote to the firm and submitted certain demands on behalf of the employees of the firm. The demands related to Bonus for the years ending 31st March 1955, 31st March 1956 and 31st March 1957 and to certain other matters. As no agreement could be reached between the parties, conciliation proceedings were started. The Conciliation Officer could not also bring about a settlement between the parties. He submitted a report to Government, who on 3rd February 1958 referred the dispute in regard to bonus for two years ending 31st March 1956 and 31st March 1957 to an Industrial Tribunal under sub-section (5) of section 12 of the Industrial Disputes Act. Respondents Nos. 2 to 4 to whom I will hereafter refer as the respondents, raised a preliminary objection that the profession followed by them which is that of solicitors, was not an industry within the meaning of this word in the Industrial Disputes Act, that consequently the dispute between them and their employees was not an

industrial dispute, that the reference made by Government was therefore bad in law, and that the Tribunal had no jurisdiction to adjudicate upon it. This objection was upheld by the Tribunal. The Tribunal therefore passed an order that the reference could not be adjudicated upon. This order is challenged in the present Special Civil Application.

2. When this application came up for hearing. Mr. Banaji appeared on behalf of the Incorporated Law Society, which is a representative society of the solicitors practicing in this Court, registered under the Indian Companies Act. Mr. Banaji stated that the Society was vitally interested in the matter, as the decision given in this case would affect not only the respondents, but all the solicitors and attorneys practicing in this Court. He therefore requested that the Society should be allowed to appear in the present application. We granted the permission asked for, as our decision will affect all persons following the profession of solicitors. We also adjourned the hearing of the application for two days in order to enable any other Union of persons employed in the offices of other solicitors to make an application for being allowed to appear, in case it chose to do so. No such application was, however, made to us.

To appreciate the arguments, which have been advanced in this case, it is necessary to consider certain provisions of the Industrial Disputes Act. The object of the Act, as stated in the preamble, is to make provision for the investigation and settlement of industrial disputes. The Act has, therefore, been enacted to provide for the settlement of only those disputes, which are of an industrial character, and not of all disputes between employers and employees. Clause (j) in section 2 of the Act defines the word "industry" as follows :

> " '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;"

The expression "industrial dispute" is defined in clause (k) as meaning '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 labor , of any person." Another definition, which is material, is that of the word "workman" who is defined as meaning any person employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward. The rest of the definition of this word is not material in this case. "Workman" is therefore defined as meaning any person employed in any industry. "Industrial dispute" means so far as is material a dispute between employers and workmen, that is, between employers and persons employed in an industry. Before there can, therefore, be a workman or an industrial dispute, them must first be an industry.

3. The principal question to be decided in this application, therefore, is whether the profession of a solicitor can be said to be an industry within the meaning of the Act. Mr. Gokhale, who appears

on behalf of the petitioners, has strenuously contended that such a profession would fall within the words "business", "undertaking" and calling" contained in the definition of the word "industry." All these three words are not defined in the Act. We, therefore, have to consider their ordinary dictionary meaning. In Webster's Dictionary the meaning given to "business" is that which busies or engages time, attention or labor ; constant employment; regular occupation; work. In Halsbury, Volume 32 1929 Edition, in para 487 it is stated that "trade in its primary meaning is the exchanging of goods for goods or goods for money; and in a secondary meaning it is 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. In para 488 it is stated that business is a wider term, not synonymous with "trade", and means practically anything which is an occupation as distinguished from a pleasure. In para 489 the learned author has observed that profit or intent to make profit is not an essential part of the legal definition of a trade or business. The word "business" is, therefore, a wider term than "trade", and according to its dictionary meaning it includes any occupation. Mr. Khambata, who appears on behalf of the respondents, has urged that as the word "business" is followed by the word "trade", it must take its color from the latter word "trade", and that the business referred to in the definition is, therefore, only that kind of business which is analogous to or which is in the nature of a trade. The latter part of the definition, which includes any calling, service, employment or industrial occupation within the meaning of industry, however, seems to indicate that the two words are not necessarily used in an analogous sense.

4. It is, however, difficult to accept Mr. Gokhale's argument that the profession of a solicitor is an undertaking. The word "undertaking", as defined in the Webster's Dictionary, means anything undertaken; any business, work or project, which one engages in or attempts; and enterprise. In *Province of Bombay v. Western India Automobile Association*[1], it was observed that an under taking is something different from business, trade or manufacture. In *Hospital Mazdoor Sabha v. State of Bombay*[2], at p. 774 it was observed that the expression "undertaking" is a term of wide import and is nothing more than any work or project which a person might engage in and that such work or project might have no commercial implications. The word "undertaking" is also used in section 25FF and section 25FFF of the Act. Section 25FF begins with the words "Where the ownership or management of an undertaking is transferred....." In these Sections "undertaking" is therefore used in the sense of an enterprise which can be owned and transferred. A solicitor's work, which depends entirely on his own personal intellectual ability, is not capable of being transferred. Consequently it would not be an "undertaking" within the meaning of the Act.

5. The word "calling" is however very wide. According to its dictionary meaning, it means one's usual occupation, vocation, business or trade. Both the words "business" and "calling" are therefore words of wide connotation. If, therefore, the ordinary dictionary meaning is to be given to them, it will be difficult to hold that the practice or the profession of a solicitor is not an industry. In fact it would not be easy to conceive of any profession which would not then fall

within the definition of this expression. This could not be the object of the Legislature. The words "business" and "calling" must be read in their context and in conjunction with other words, which are used in the same definition and from which they must take their colour. The word "calling" is followed by the words "of employers." The latter part of the definition contains the words, "occupation or avocation of workmen." The words "employer" and "workmen" necessarily import the relationship of employer and employee. An essential requisite of industry is, therefore, the existence of relationship of master and servant. This was so held in 51 Bom L R 58 : (AIR 1949 Bombay 141), in which it was observed that what is really emphasised in the definition of "industry" is the relationship of employers and workers. This relationship of master and servant or employer and employee must, however, exist in the industry itself. In other words, only that business, trade undertaking or calling can be held to be an

[1]51 Bom LR 58 at p. 66 : (AIR 1949 Bom 141 at pp. 149-50)

[2]58 Bom LR 769

industry which requires the co-operation of both the employer and the employees for carrying on that business, trade, undertaking or calling. This is also the ordinary concept of the word "industry". In Webster's Dictionary this word is defined as any department or branch of art, occupation, or business especially one which employs much labor and capital and is a distinct branch of trade." Another definition given in the same dictionary is "systematic labor or habitual employment; especially human exertion employed for creation of value regarded by some as species of capital or, wealth; labor ." In its ordinary meaning "industry", therefore imports the concept of co-operation between the employer and the employed. In order that an enterprise may constitute an industry, it must therefore be one for the carrying on of which it is necessary to employ labor . In other words, it must be one which requires the joint effort of both the employer and the employed.

6. Mr. Gokhale has contended that under the definition of the word "industry" given in the Act, two things are necessary in order to constitute industry. There must be a business, trade, undertaking, manufacture or calling, and secondly there must be relationship of master and servant. If these two are present, the enterprise will be an industry within the meaning of the Act. Mr. Gokhale has, therefore urged that every occupation or business, in which persons are employed, is an industry within the meaning of the Act. This argument ignores the basic concept of industry, which is that there must be joint endeavour of both the employer and the employed. The argument, if accepted, would lead to astounding results. The business of a hawker would have to be held to be an industry, if no employs a labor er to carry his basket. So also the business of a petty shop-keeper, like that of a pan-shop, will have to be held to be an industry, if a servant is employed to sweep and clean the shop. A doctor, who visits his patients, would be deemed to be engaged in an industry, if he employs a peon to carry his bag containing instruments and medicines. Several other similar instances could be envisaged. We have no doubt that the Legislature could not have intended that the Act should result in such drastic and serious consequences.

7. In any case, the basic concept of industry has always been held to be that there must be co-

operation between the employer and the employees either in producing wealth or in rendering services. In other words, what comes out of the industry must be the result of the combined effort of both. That the Legislature had this concept in mind is indicated by the use of the words "of employer" in the first part of the definition and the words "employment, or industrial occupation or avocation of workmen" in the second part. In *Hariprasad Shivshanker v. A. D. Divelkar*[1] the Supreme Court has observed :

> "It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of 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 is intended. Where within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined."

There are no compelling words to show that the Legislature intended to exclude the essential concept of industry from the definition given to this word in the Act.

[1]59 Bom LR 384 at p. 389 : (AIR 1957 SC 121 at p. 127)

8. Mr. Gokhale has urged that the concept of industry has changed in recent times. That is undoubtedly so. As pointed out by the Supreme Court in *D. N. Banerji v. P. R. Mukherjee*[2]*,*

> "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 labor co-operate with each other for the purpose of producing wealth in the shape of goods, machines, tools etc., and for making profits." In the same case it has been pointed out that the profit motive is no longer regarded as an essential element of industry. From the observations made at p. 312 (of SCR) : (at p. 61 of AIR) it appears that the investment of capital in the ordinary sense is no longer a sine qua non or necessary element in the modern conception of industry. It was, therefore, held in this case that the expression "industrial dispute" in the Industrial Disputes Act includes disputes between Municipalities and their employees in branches of work that can be regarded as analogous to the carrying on of a trade or business. It is also not in dispute that the word "industry" can no longer be limited to enterprises which are engaged in the production of wealth, goods or other commodities. Relying on the observations of Isaacs J. in *Federated State School Teachers' Association of Australia v. State of Victoria*[3]*,* Mr. Gokhale has contended that rendering of services may by itself be sufficient to make an organisation an industry. We are inclined to accept this argument particularly having regard to the fact that the second part of the definition includes any service within the term 'industry". But as I will point out presently, in the same case for a service to be regarded as industry, Isaacs J. himself considered co-operation between employer and employees as being a necessary requisite.

9. The pursuit of a learned profession like that of a solicitor does not require any co-operation of

labor . A solicitor offers his own personal services or, to put it in different words, is paid for the legal advice and legal assistance given by him personally. His staff cannot do this work or give legal aid to his clients. The money which he earns is for work done by him personally. Its quality depends on his personal qualifications, his brains, his knowledge of law, and the labor put in by him personally. The remuneration earned by him depends upon his personal reputation and the kind and quality of work done by him personally. His staff performs what may be called ministerial functions by typing his opinions, or the documents prepared by him, or by maintaining accounts of his income and expenditure. There is no co-operation between or joint effort of the employer and the employee in this profession nor is such co-operation or combined effort indispensable for carrying on the profession. An essential requisite of the concept of industry is, therefore, wanting. Consequently, such a profession cannot be said to be an industry within the meaning of the Act.

10. Mr. Khambata has contended - and we cannot say that there is no force in this argument - that if the Legislature had intended that a profession like that of a solicitor should also fall within the definition of the word 'industry" and that the Act should apply to such professions also, it would have included this word specifically in the definition. In this connection, he has drawn our attention to Articles 19 (1) (g) and 276 of the

[2]1953 SCR 302 at p. 307 : (AIR 1953 SC 58 at p. 60)

[3](1929) 41 CLR 569

Constitution, and section 2(4) of the Bombay Shops and Establishments Act, in which the word "profession" has been separately used. In Article 19 (1) (g) the words used are "to practise any profession, or to carry on any occupation, trade or business." In Article 276 the words used are "professions, trades, callings or employments." Section 2(4) of the Bombay Shops and Establishments Act uses the words "business, trade or profession."

11. I will now refer to the various cases, which have been referred to in the course of arguments. In *Federated Municipal and Shire Council Employees' Union of Australia v. Melbourne Corporation*[4], it was held by a majority of 4 to 2, that municipal corporations are not with regard to the making, maintenance, control or lighting of public streets, exempt from. Common Wealth Conciliation and Arbitration Act 1904-1915, enacted to provide for the settlement of industrial disputes. Two of the Judges, who formed the majority, were Isaacs and Rich JJ. In their judgment at p. 554 they formulated the concept of an industrial dispute in these words :

> "Industrial disputes occur when, in relation to operations in which capital and labor 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 instance, the legal and the medical professions, because they are not carried on in any intelligible sense by the co-operation of capital and labor and do not come within the sphere of industrialism.....It implies that 'industry', to lead to an industrial dispute, is not, as the claimant contends, merely industry in the abstract sense,

> as if it alone effected the result, but it must be acting and be considered in association with its co-operator 'capital' in some form so that the result is, in a sense, the outcome of their combined efforts." Co-operation of capital and labor and their combined effort were, therefore, held to be essential elements of the concept of industry. This case has been referred to at some length by the Supreme Court in their judgment in Banerji's case 1953 SC R. 302 : AIR 1953 Supreme Court 58.

12. The other case from Australia to which reference has been made, is (1929) 41 CLR 569. In that case the High Court of Australia, by a majority of 4 to 1, held that the educational activities of the States carried on under the appropriate statutes and statutory regulations relating to education did not constitute an "industry" within the meaning of section 4 of the Commonwealth Conciliation and Arbitration Act 1904-1928; that the occupation of teachers so employed was not an industrial occupation, and that the dispute which existed between the States and the teachers employed by them was therefore not an "industrial dispute". The majority of the Judges in their judgment at p. 573 described the economic concept of industry in these words :

> "Economists, notably Mr. J. A. Hobson (The Industrial System), say that a scientific interpretation requires us to include in the word 'industry' processes which are concerned with services such as the administrative services of public officials and the skilled professional advice of doctors and lawyers."

[4](1918-19) 26 CLR 508

At page 574 if was observed that this economic view had never been accepted by the Court and that it was too wide. It was also observed that the view that the sphere of industrialism is to be found in operations, in which the relation of employer and employee subsists, was too wide. At p. 575 reasons are given for holding that the educational activities of the States did not constitute an industry. These are that they bear no resemblance whatever to an ordinary trade, business or industry; that they are not connected directly with, or attendant upon, the production or distribution of wealth; and that there is no co-operation of capital and labor , in any relevant sense. Isaacs J. did not agree with the majority view, but in his judgment at p. 580 he stated that he adhered to the concept of industrial dispute formulated by him in his judgment in Federated Municipal Employees' Union case, (1918-19), 26 CLR 508. After citing the passage from his previous judgment, which I have quoted above, he observed as follows at p. 581 :

> "First of all, there is co-operation of 'capital' and 'labor '. Everyone knows that means, in the context, the co-operation of employer and employed, the words "capital and labor " being representative of the two classes of co-operators. They are the 'partners' referred to by Professor Hearn in his work mentioned. In his recent work Labor Relations in Industry, Dwight Lowel Hoopingarner, M. A., formerly lecturer, Harvard University, says : There is a marked division of the active parties in industry into the two groups of employing and employed."

At p. 577 Isaacs J. rejected the argument that an industrial dispute cannot possibly occur, except where there is furnished to the public - the consumers - by the combined efforts of employers and employed, wealth in the sense of "tangible, ponderable, corpuscular wealth." In his opinion an organization for service could also be regarded as an industry. On the same p. 577 he observed :

> "But it further neglects the fundamental character of 'industrial disputes' as a distinct and insistent phenomenon of modern society. Such disputes are not simply a claim to share the material wealth jointly produced and capable of registration in statistics. At heart they are a struggle, constantly becoming more intense on the part of the employed group engaged in co-operation with the employing group in rendering services to the community essential for a higher general human welfare, to share in that welfare in a greater degree." Even in this judgment, therefore, Isaacs, J. adhered to his previous view that in an industry there are two partners, the employer and the employed and that the result or the product of the industry, either in the form of wealth or in services to the community, must be the outcome of their combined efforts.

13. The next case referred to was *National Association of Local Government Officers v. Bolton Corporation*[5], in which it was held that a dispute as to conditions of service of officers of a municipal corporation was a trade dispute. This decision was given having regard to the definitions of the words "trade dispute" and "workman" given in the Conditions of Employment and National Arbitration Order, 1940. These definitions are materially different from those given in our Act. This case is, therefore, not of much assistance.

[5]1943 A. C. 166

14. Mr. Gokhale has also relied on three decisions of this Court in 51 Bom. LR 58 : (AIR 1949 Bombay 141), 58 Bom LR 769 and *Nagpur Corporation v. N. H. Mujumdar*[6], In the first case it was held that the Western India Automobile Association of Bombay, which exists for the purposes of rendering services to its members, falls within the purview of the Industrial Disputes Act. In the second case it was held that the activity of the State of Bombay in running a hospital and employing workmen constitutes an industry within the meaning of the Industrial Disputes Act. Mr. Gokhale has relied on the observations in the judgment at p. 774 :

> "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 or project may have no commercial implications."

Both these cases are clearly distinguishable from the present one. Neither the Western India Automobile Association in the first case, nor the Hospital in the second case, could be run

without the co-operation of labor. The running of these institutions did not depend solely upon the personal skill, knowledge or effort of any individual. We have also not been able to find anything in the judgments in these cases, which would indicate that co-operation of labor was regarded as not being a necessary element of the concept of industry.

15. In the third Nagpur Corporation case, 60 Bom LR 180 : (AIR 1958 Bombay 231), the decision in the Hospital Mazdoor Sabha case, 58 Bom LR 769 was followed and it was held that the question whether any particular activities of a local authority are industrial activities or not can only be decided after bearing in mind the definition of the term "industry" contained in the Act, and examining the activities of these as well as of other departments in the light of that definition as well as of the test laid down in the Hospital Mazdoor Sabha case. In his judgment at p. 186 Mudholkar J. cited the first sentence in the passage from the judgment of Isaacs and Rich JJ. in Federated Municipal Employees' Union case, 26 CLR 508 at p. 554, which I have quoted above, and observed that it did not appear that Their Lordships were of the view that for an activity to be classed an industry it must necessarily be carried on by the co-operation of capital and labor for the satisfaction of human wants and desires. The attention of the learned Judges does not appear to have been invited to the subsequent observation in the same passage that "industry" to lead to an "industrial dispute" must be acting and be considered in association with its co-operator capital in some form so that the result is the outcome of their combined efforts. As I have already pointed out, both in this case as well as in the subsequent Federated School Teachers' case, 41 CLR 569, co-operation of capital and labor or of employer and employed was regarded as being necessary for holding an enterprise to be an industry.

16. Then there are two decisions of the Calcutta High Court, *Brij Mohan v. N. C. Chatterjee*[7], and *Dunderdele v. Mukherjee*[8],

[6]60 Bom LR 180 : (AIR 1958 Bom 231) [8] AIR 1958 Cal 465 [7] AIR 1958 Cal 460

The identical question, which we have to decide, arose for consideration in these cases. In both the cases it was held that the profession of a solicitor is not an industry and that a dispute between him and his employees does not constitute an industrial dispute. In the former case it was observed that the expression "industry" does not include within its concept the case of an individual, who carries on a profession dependent upon his own intellectual skill, and that the calling of a solicitor carrying on his normal avocations cannot be called an industry. In the latter case Mukharji J. held that the basic and distinctive test of industry is that it is a partnership between labor and capital, that each of them has a share in building the product of industry and that the final product is the result of co-operation and partnership between them. Where, however, the product is not the result of joint labor and capital, the very basic test of industry is absent. At p. 469 he observed :

> "A thinker or a statesman or a philosopher who produces a work which embodies the result of his research, study and ideas does not carry on an industry. The fact that the result of such thought can be produced in print and paper if printers, publishers and other

> persons help in producing the work does not mean that the work is joint. The work remains the individual effort. The publication of the work is not the work itself. Similarly a professional man like a lawyer or a solicitor who renders his professional services to his clients and provides them with his professional skill and experience does an individual work. The fact that communications have to be carried on and correspondence has to be typed by a typist, the fact that accounts have to be kept which usually have to be done by accountants, and the fact that assistants are employed to assist, do not make the result or the product joint as in an industry. The product remains the individual product. A solicitor who gives legal advice to his client may give it orally, or may write it in his own hand. The fact that instead of writing his legal advice in his own hand he employs a typist does not make it an industry, nor does it make the legal advice the joint product between him and the typist."

At p. 468 he observed :

> "In an expanding society with broadening concept of business and industry the word 'industry' is also enlarging its ambit, scope and expression. Even then outside the expanding horizon of industry in an industrial civilization and in an industrial democracy there still remains the vast world of individual work and individual endeavour depend-in on individual skill, excellence and peculiarity personal to the individual or individuals concerned. That vast world does not come within the increasing glitter and glamour of industry .....One such world is the world of private endeavour and private excellence personal to the individual concerned. Learned professions, understood in their professional sense, such as the professions of medicine and of law are not normally industries unless some outstanding feature of industry is added to them." With respect, we agree with these observations, except that, to quote the words of Isaacs J. in Federated School Teachers Case 41 CLR 569, by co-operation of capital and labor is meant in the context the co-operation of employer and employee, the words "capital" and "labor " being representative of and indicating the two classes of co-operators.

17. The Tribunal was, therefore, right in holding that the profession of a solicitor is not an industry within the meaning of the Industrial Disputes Act.

18. After the arguments were over before the Industrial Tribunal, the respondents produced a copy of the judgment of the Calcutta High Court in Brij Mohan's case AIR 1958 Calcutta 460. Thereafter an attempt was made on behalf of the petitioners to show that the respondents' firm carried on some business other than that of solicitors. It was alleged that the respondents were engaged in doing business in forward transactions in shares and silver and also in the business of buying and selling property. The allegations with regard to carrying on business in shares and in silver were denied in his affidavit filed by the second respondent. The Industrial Tribunal has believed his statement on this point. With regard to the second allegation the respondent mentioned four instances of purchases and sales of property between 1933 and 1957. Three of

these transactions took place before the present firm of the respondents came into existence in April 1946. Consequently, they must be left out of consideration. With regard to the fourth transaction, the affidavit filed by the respondents shows that a property was purchased by the firm at an auction sale held in consequence of a charging order for costs made in favour of the firm. This cannot be regarded as dealing in the business of buying and selling property. It appears from para 11 of the petition that the petitioners had requested the Tribunal to direct the respondents to produce four documents, the three deeds of partnership executed in 1929, 1945 and 1946, and the document executed when Mr. Amin retired from the partnership in November 1935. The documents executed prior of 1946 were obviously irrelevant. They had no connection with the firm in which the petitioners were employed. With regard to the deed of partnership executed in 1946, it is admitted that this document was produced by the respondents in Court. It was shown to the Tribunal. The petitioners have alleged in clause (n) of para 11 of the petition that this document was not shown to them. The respondents have in their affidavit denied in general terms the allegations made by the petitioners in para 11 of their petition. Even assuming that this document was not shown to the petitioners, we do not think that any injustice has been caused to them, because the only transaction alleged by them, which took place during the time the firm, in which they were employed, was in existence, was a transaction in which the respondents purchased a property in execution of an order made in their favor for costs. This transaction by itself would not be a sufficient ground for holding that the respondents were engaged in the business of purchasing and selling property.

19. The view taken by the Industrial Tribunal that the respondents' firm did not constitute an industry, and that the dispute between them and their employees was not an industrial dispute, which could be the subject of a reference under the Industrial Disputes Act, is therefore correct.

20. The rule will be discharged. There will be no order as to costs.
Rule discharged.