

PATNA HIGH COURT

Management of Bihar Khadi Gramodyog Sangh

Vs

State of Bihar

Civil Writ Jurisdiction Case No. 31 of 1975

(S.N.P. Singh C. J. and Sushil Kumar Jha, J.)

09.02.1976

JUDGMENT

Sushil Kumar. Jha. J.

1. This is an application under Articles 226 and 227 of the Constitution by the Management of Behar Khadi Gramodyog Sangh, an institution allegedly having lofty ideals and commendable activities with laudable objectives in view. The application is directed against an interim award dated the 18th November, 1974. made by the Presiding Officer. Labour Court, Muzaffarpur (respondent no. 3), which was published on the 16th of December, 1974. in Reference Case No, 6 of 1973. A copy of the aforesaid interim award has been marked Annexure '8' to the writ application. The prayer made is for the issuance of a writ of certiorari quashing Annexure '8'. The reference aforesaid has been made regarding a dispute arising out of discharge of 216 workers from service by the petitioner.

2. The relevant facts giving rise to this application are these. The petitioner "the Sangh". is a body registered and incorporated under the Societies Registration Act, 1860, with its head office at Sarvodaya gram. Muzaffarpur. The case of the petitioner is as follows. It is charitable and philanthropic institution. It has been formed with the object of establishing a nonviolent society free from exploitation for attempting to bring about a change in the values of life so that the "self" in the human being may be prompted by the desire for universal good on the basis of truth and nonviolence. The organization is dedicated to render services to the people and to undertake philanthropic and constructive work based on the philosophy of 'Sarvodaya'. A copy of the Memorandum of Association and Bye laws of the Sangh has been marked annexure '1' to the petition. In furtherance of the aforesaid objectives the petitioner undertakes programmes relating to (a) establishing Gram Swaraj; (b) Bhccdan, Gramdan, Sampattidan; (c) development of agriculture, Khadi, village and Home Industries; (d) publication of Servodaya literatures; and (e) imparting training to workers. Other activities incidental to these programmes are also undertaken by the Sangh. It has got large number of workers who are said to be dedicated. It is claimed that no relationship of master and servant or employer and employee exists amongst the staff and personnel of the Sangh at various levels for carrying on the aforesaid activities in furtherance of the objectives mentioned above. Every worker irrespective of the post he holds in

the institution gets monthly "Samvetan" (equal pay) for his subsistence. The workers are, so to say, living partners of the institution. The Sangh, it is said, renders services of the masses besides other constructive work through khadi and home industries. These -Programmes are job oriented programmes and provide employment opportunities to agricultural labourers, who remain unemployed during a major part of the year, widows and pardanashin ladies, who cannot go out of their homes to undertake any employment outside. These activities are claimed to have been carried on 'no profit, no loss' basis. The necessary funds for executing these programmes are provided by the Government of India through Khadi and Village Industries Commission, Bombay. The Sangh has not established any factory or any industry nor does the relationship of master and servant exist between the Petitioner, hereinafter to be mentioned as Sangh and its workers. It was initially recognised by the All India Charkha Sangh and subsequently by All India Khadi Gramodyog Board and All India Khadi Gramodyog Commission as and when these bodies came into existence. The Khadi and Village Industries Commission Act, (1956) (Central Act 61 of 1956), hereinafter to be referred to as "the Khadi Act" was enacted by Parliament with the object to provide for the establishment of a commission for the development of Khadi and village industries and for other allied and incidental matters. A commission has accordingly been established by the Central Government in the year 1957 and is functioning since then. The commission has to take suitable steps to maintain or assist in the maintenance of institutions of the nature of the Sangh for the development of Khadi and village industries. The Sangh, according to the petitioner, is financed by the Central Government through the Khadi and Village Industries Commission which supervises and controls its activities the commission has appointed a 'Certification committee" which regulates the production of Khadi through different affiliated centres and institutions, which act according to the regulations framed by the certification committee. Any deviation from the regulations so framed renders the affiliation liable to cancellation. In order to ensure that the institutions are functioning strictly in conformity with the rules, the committee conducts periodical audit and inspection of the institutions. It also investigates into complaints made against the institutions. The Certification Committee has certified several institutions in India including the petitioner Sangh. The Account of the Sangh is audited by the Deputy Accountant General of the Government of India. On these averments the petitioner claims that the Sangh carries on its activities under the authority of the Central Government. It is financed by the Central Government and planned, organised and controlled by the Commission established under the Khadi Act, The Sangh, it is said, is exempted from the operation of the sales tax and income tax laws also. In furtherance of the objectives aforesaid. the Sangh trains the villagers in spinning, weaving, dyeing, beekeeping and Gramdan movement, inter alia, and runs schools and training centres. On these assertions the Sangh claims that its activities are not analogous to "industry" and so it does not come within the definition of the term "industry" as laid down in Section 2 (j) of the Industrial Disputes Act, 1947, hereinafter to be called "the Act." If at all, it be held to be an 'industry' then the "appropriate Government" in relation to the Sangh for the purpose of Section 2 (a) of the Act is the Central Government and not the State Government of Bihar. The contesting respondent is the Bihar Khadi Gramodyog Sangh Karyakarta Union, which is respondent no. 2. It is admitted that the Sangh terminated the services of 216 persons working in the institution. The Union (respondent no, 2) took up their cases and made a grievance against such termination. The Government of Bihar by its Department of Labour and Employment Notification No. III/DI-5033/73 L & E-1594, dated the 3rd May, 1973, referred the under noted matter for adjudication to the Labour Court, Muzaffarpur, under Section 10 (1) (c) of the Act:

"Whether the termination of services of the workmen in the enclosed list is justified? If not, whether they are entitled to reinstatement and/or any other reliefs?"

The list mentioned in the order of reference contains the names of 216 persons. A copy of the notification has been marked Annexure '2'. Annexure 2 also incorporates the list of the names of such discharged workman of the Sangh.

3. The Labour Court, Muzaffarpur, registered the matter as Reference Case No. 6 of 1973 and issued notices to the parties to submit their written statements, list of witnesses, documents etc. and to serve copies of the same on the other side. The Government did not send any copy of the statement of demand along with the notification on the basis of which the alleged dispute was referred to the Labour Court. The Management of the Sangh in the absence of the statement of demand, aforesaid, was unable to prepare and file its written statement. The Union (respondent no. 2) filed its written statement on 5-12-1973 in a sealed cover. It also filed a petition for granting interim relief to 216 workers, whose services have been terminated. A prayer was made on behalf of the petitioner for further time to file written statement but it was rejected. Thereafter it filed a petition raising objections to the maintainability of the references and the jurisdiction of the Labour Court to proceed with the same. Labour Court by its order dated 18-12-1973 fixed 19-12-1973 as the date for hearing of the preliminary objections and the petition for granting interim relief. The petitioner being aggrieved by the orders of the Labour Court dated 5-12-1973 and 18-12-1973 filed a writ petition before this Court bearing C.W. J.C. No. 7 of 1974. When that case was placed for admission before a Bench of this Court on 7-1-1974. Untwalia, C. J. and N. P. Singh, J. passed an order to the effect that the statement of demands on behalf of the workmen be served upon the petitioner within one week from that date and the petitioner should thereafter file its written statement. With such a direction the writ petition was allowed to be withdrawn. Thereafter respondent No. 2 supplied copies of its letters dated 30-12-1972 and 12-3-1973 addressed to the Deputy Labour Commissioner and Conciliation Officer, Patna. A copy of the written statement filed by the workmen was served upon the petitioner on 31-1-1974 asserting these points as preliminary objections to the maintainability of the reference:

- (i) The Sangh was not carrying on any 'industry' as defined in Section 2 (j) of the Act and as such the provisions of the Act were not applicable.
- (ii) The 'appropriate Government' in the matter was the Central Government and not the State Government as defined in Section 2 (a) of the Act since the Sangh was carrying on its activities under the authority of the Central Government,
- (iii) No demand had been placed upon the Management regarding reinstatement of any of the persons named in the list enclosed with the notification (Annexure 2) and as such there was no 'industrial dispute' which could be referred for adjudication under Section 10 (1) of the Act.

4. In reply to the application for interim relief of the Union (respondent no. 2) on merits it was stated as follows:

"(a) Persons named at serial Nos. 12 to 29, 32 to 36, 38 to 52, 55 to 59 and 62 of the reference were accused in a proceeding under section 107 Criminal Procedure Code,

which is pending before S. D. M. Madhubani.

(b) Persons named at serial Nos. 12, 14 to 26, 28, 35, 36, 38, 39 and 43 to 54 were accused in a criminal case for having committed rioting, wrongfully restrained authorities of the Sangh and willing workers from entering the premises of the Sangh on 20-11-1972 for which a criminal case is pending against them for trial before the Judicial Magistrate, Madhubani.

(c) Persons named at serial Nos. 67, 71, 78, 86, 93, 112, 120, 122 and 132 committed serious overt acts endangering breach of peace for which they are accused in a proceeding under section 107 Criminal Procedure Code which is pending before Executive Magistrate, Muzaffarpur.

(d) Persons named at serial Nos. 67, 68, 69, 71, 90, 91 and 92 assaulted the Assistant Secretary of the Sangh on 15-11-72 at about 4.30 P.M. for which a criminal case under section 307, 323, 379, 392 and 395 Indian Penal Code has been instituted against them and is pending in trial before the Judicial Magistrate, Muzaffarpur.

(e) Persons named at serial Nos. 72, 78, 79, 94, 99, 103, 104 and 116 assaulted Sri Dambaran Singh a worker who did not join the illegal strike and snatched a wrist watch and ₹ 200/- from his pocket on 18-12-1972 at about 4 P.M. for which a criminal case under section 379, 392, 395 and 307 Indian Penal Code has been instituted against them and is pending trial before the Judicial Magistrate, Muzaffarpur.

(f) Persons named at serial Nos. 69, 72, 73, 74, 77, 90, 93, 96, 97, 98 and 100 assaulted Shri Panchanan Singh Secretary, Chotanagpur Khadi Gramodyog Sangh, and snatched away his wrist watch, gold rings, fountain pen and money bag containing ₹ 175 and odd on 24-11-72 for which a criminal case has been instituted against them under section 147, 148, 307, 323, 337, 341, and 395 Indian Penal Code which is pending trial before the Chief Judicial Magistrate, Muzaffarpur.

(g) Persons named at serial Nos. 74, 75, 76, 101 and 102 assaulted Sri Diwakar Jha, Assistant Manager, Gramodyog Press, Muzaffarpur, and snatched away ₹ 500/- in cash and a draft of Rupees 25,000/- and other papers belonging to the Sangh on 24-11-72 at, about 12 noon for which a criminal case under section 304, 379 and 147 Indian Penal Code is pending trial against them before the Judicial Magistrate, Muzaffarpur.

(h) Persons named at serial Nos. 157 along with others forcibly entered into Serayaganj sales Centre, Muzaffarpur, abused and assaulted Shri Jagannath Mishra, Manager, and other workers for which a criminal case is pending trial against them before the Judicial Magistrate, Muzaffarpur.

(i) Person named at serial No. 202 was incharge of Bhagwanpur (Rohtas) centre of the Sangh. He falsified with the record of the Sangh and defalcated about 10,000/- for which a criminal case is pending trial against him u/ss. 406, 409, 500 and 504 Indian Penal Code before Judicial Magistrate, Bhabua.

(j) Persons named at serial Nos. 7 to 10, 66, 113 and 129 forcibly entered into the office of the Assistant Secretary at Sarvodayagram, Muzaffarpur on 9-10-1972 at about 4.30

P.M. and wrongfully restrained him in his office and under threat and coercion forced him to issue a letter of transfer of Shri Sitaram Choudhary from Muzaffarpur to Patna for which a criminal case is pending trial against them u/ss. 141, 344, 379 and 448 Indian Penal Code before the Judicial Magistrate, Muzaffarpur.

(k) Persons named at serial Nos. 8, 9, 66 and 95 are accused in a proceeding under section 107 Criminal Procedure Code which is pending before the Executive Magistrate, Muzaffarpur.

(l) Persons named at serial Nos. 65, 66, 95 and Shri Mahendra Sharma, serial No. 64, assaulted the Assistant Secretary of the Sangh on 15-11-72 at about 4.30 p.m. for which a criminal case is pending trial against them u/ss. 307, 323, 379, 312, 395 Indian Penal Code before the judicial Magistrate, Muzaffarpur.

(m) Persons named at serial Nos. 49, 51, 126, 130, 214, and 216 never worked in the Sangh.

(n) Persons named at serial Nos. 2, 4, 203, 209, 210, 211, 212 and 215 left the Sangh voluntarily."

In the written statement of the Union (respondent no. 2) it had been alleged that 216 persons named in the list had been victimised for their trade union activities. They had not committed any act of misconduct. No charge sheet had been issued and no domestic inquiry had been held before their services were terminated.

5. The further contentions of the workmen were these. The Sangh was not a charitable institution. It was a commercial establishment and its activities were analogous to 'trade and business.' The Sangh was organised for economic activities in competition with foreign goods during the pre-independence era. The object was to boycott Lancashire textiles, The underlying object was to lessen the economic grip of the British manufacturers on the Indian Market. The Sangh derived huge profits from production and sale of its goods and no part of the income, much less any substantial part thereof, was spent on any philanthropic or charitable work. In carrying on its commercial activities, the Sangh had nothing to do with objectives like Gram Swarjya, Bhoodan, Gramdan and Sampattidan which were activities of independent institutions functioning in the country. The workmen were all common wage earners and the terms and conditions of their employment have nothing to do with any commitment to the ideology of the Sanghan ideology which was more high sounding than real in content. The concept of equal wages was a misnomer. In fact, equal wages to the employees of the Sangh was not in vogue. The workers of the Sangh had been getting dearness allowance, provident funds and bonus. They were also subject to disciplinary action by the Management of the Sangh. The various establishments of the Sangh were factories and commercial enterprises and were registered as such under the provisions of the Factories Act, 1948. and Bihar Shops and Establishments Act, 1953. The Sangh was engaged in the production of Khadi and other village industry products. It maintained a printing press also. The products of the Sangh were sold in the open market through its own stores and sale centres. It ran training centres for training the workers in the aforesaid specialised trades. Such a training was carried on in a systematic manner with the help of the employees. The activities of the Sangh were primarily directed towards rendering material services to the

public at large. The Sangh earned huge profits and it employed nearly 3000 workers who were paid on monthly as well as pie cerate basis. In short, the activities of the Sangh were a systematic undertaking with the object of production and distribution of material goods and rendering material services to the community at large. Therefore, the activities of the Sangh were industrial activities. According to the workmen, the reference was competent and the appropriate Government was the State Government. The Central Government had nothing to do with the affairs of the Sangh. The Industry was not a controlled one nor was it carried on by or under the authority of the Central Government. As such, the State Government was competent to make the reference.

6. The Management of the Sangh also filed a rejoinder to the petition of the Union dated 5-12-1973 in the matter of grant, of interim relief. A copy of that rejoinder has been marked Annexure '7'.

7. The Labour Court proceeded to hear the preliminary issue regarding the maintainability of the reference and the jurisdiction of the court on two grounds, namely, (i) whether the Sangh was an 'industry' as defined in section 2 (j) of the Act. and (ii) whether the 'appropriate Government' was the Central Government or the State Government. The Labour Court also proceeded to hear the petition for grant of interim relief along with the matter of maintainability. It did not hear the parties on the question of maintainability on the third ground raised on behalf of the Sangh, namely, that no demand had been placed upon the Management on being opposed on behalf of the Union and the question was left open for consideration at a later stage against which the petitioner has no grievance. Both the parties adduced oral and documentary evidence in support of their respective cases.

8. The Labour Court by its interim award (Annexure 8) which is impugned in this writ application, held that the activities of the Sangh fell within the definition of an 'Industry' as defined in Section 2 (j) of the Act. It also held that the 'appropriate Government' was the State Government and as such the reference was maintainable. By the impugned award respondent No. 3 also granted interim relief to 189 persons only out of 216 persons and directed that they be paid at the rate of ₹ 50/- per month. The validity of this interim award has been challenged as being without jurisdiction.

9. The Labour Court in the impugned award summed up, which in its opinion. according to the settled case law, on the subject were the attributes by which an 'industry' can be understood and identified:

- (i) "The activity should be systematic, aimed at the production or distribution of goods or the rendering of material services to the community at large or a part of such community."
- (ii) "The activity should not be casual or for the pleasure of any individual."
- (iii) "The activity should be organized in such a manner in which trade or business' is generally organized. or, in other words, the activity should be an economic activity."
- (iv). "The activity should be carried on with the cooperation of the. employer and employees."
- (v) "The activity should be directly connected with the satisfaction of mate rial human

needs as opposed to spiritual."

(vi) "The activity must not be in exercise of regal functions of the State." Applying these tests, the Labour Court on an appraisal of evidence adduced before it recorded the findings to the following effect. It was fairly conceded before the Labour Court that the activity of the Sangh was neither casual nor for the pleasure of any individual. The Sangh is a registered society registered in the year 1956 under the Societies Registration Act, 1860. Formerly there was a Bihar Khadi Samiti and Bihar Gramocivog Samiti. In the year 1955 both the Semities were amalgamated and the Bihar Khadi Gramodyog came into being. It was in the year 1955 that village industries were added to the programme of Khadi production. The head office of the Sangh was at Muzaffarpur in this State. The main object of the Sangh was the promotion of Khadi and village industries. The activities of the Sangh are various and varied. It employs more than 2000 workers to carry on its different activities. It has got its production and sale centres throughout the State of Bihar. It manufactures and produces (i) Khadi Cottons, (ii) Khadi Silks, (iii) Khadi Woollens, (iv) Ghani mastard oil (v) Handmade paper. (vi) Soap, (vii) Honey, (viii) Milk. (ix) Ghee, (x) Gur, Khandsari and Palm Gur, (vi) Match boxes (xii). Leather shoes and suit cases (xiii) Bricks and Tiles, and (xiv) Gas from cow dung. The Sangh also runs a press known as Gramodyog Press which caters to the needs of public in general and institutions like the Bihar Electricity Board and the Gandak Project, Government of Bihar. It printed books on behalf of different publishing concerns. Some of such printings were University Passports. the prices being ₹ 4.60 per copy and ₹ 2.50 per copy for different sizes respectively. It also published superior English translation priced at Rupees 5.50 per copy. Apart from such publications, it printed weeklies. About 40 workers alone were employed in the press section. The sale register of the Sangh showed a considerable amount of business done during the period between March 1972 and June 1973. Income from the press during that period alone was over one lac of rupees. The Sangh produced such goods also as were outside the scope of Khadi and Gramodyog products. In respect of such products the Sangh is registered under the Central and State Sales Tax Acts. It also engages itself in the process of dyeing and printing of cloths. There is a carpentry and black smithy section attached to the Sangh 's Office at Muzaffarpur. The Sangh also sells Hardwar made Khadi woollen blankets, Ambar Charkhas, furniture, oil crushing machines. bee boxes, sickles and khurpies (a small implement for spading earth). Admittedly the business of the Sangh ran into lacs of rupees every year. Different balance sheets were prepared in respect of different sections or departments of the Sangh. It often takes loan from the Bihar State Khadi and Village Industries Board. On the admission of the Management's witness, the loan due against the Sangh was about ₹ 8.40,000/-. Consolidated balance sheets were also prepared by the Sangh. Its activities have been expanding and its business increasing from year to year. In the year 1958-59 the Sangh made purchases to the tune of over three crores of rupees and sold goods to the extent of over two crores of rupees. It was not denied by the Management that the Sangh made

huge profit but it was said that the income from profit derived was to be ploughed back into the development of the Sangh's activities. The Sangh was not an institution owned by any individual and, therefore, the income from profit could not possibly be distributed to the members of its Niyamak Mandal (Managing Committee). The employees of the Sangh were subject to provident fund deposits. They were liable to disciplinary actions. They could be suspended or dismissed. The employees were not dedicated workers committed to the ideal of Sarvodaya, a term which has not been explained with any precision. The case of the Management regarding 'Samvetan' (equal wages) was not borne out by the evidence on record. All the workers of the Sangh did not get equal pay. Though the Sangh imparted training to some of its workers, such training was not the main object. Even training was imparted with a view to getting improved services from the workers. The activities of the Sangh were carried on systematically with a view to production and distribution of material goods and rendering material services to the community at large. The activities of the Sangh were organised in such a manner in which 'trade or business' on large scale was planned and organised. The activities were wholly economic in character. Although the activities of the Sangh were carried on with the cooperation of more than 2000 employees the workers were on the pay roll of the Sangh. The activities of the Sangh were commercial in character and were directly connected with the satisfaction of material human needs as opposed to spiritual. The Sangh follows trade, business and manufacture in the production of material goods and the employees follow service, employment and industrial occupation. in aid of Sangh's huge enterprise. The Sangh carries on its activities not free from profit motive. The enterprise undertaken by the Sangh was not only analogous to 'trade or business' in a commercial sense but it was outright 'trade or business' in a commercial sense. The Sangh was, therefore. an industry within the meaning of Section 2 (j) of the Act. As already stated earlier, the Labour Court having found that the State Government was the appropriate Government and that 189 out of 216 workers have a good prima facie case, it granted interim relief by way of an interim award which has been impugned.

10. Mr. B. C. Chose, learned counsel for the petitioner, raised four points in support of this petition, namely,

- (1) The Labour Court had fallen into an error in holding that the Sangh fell within the definition of 'industry' under Section 2 (j) of the Act.
- (2) The decision of the Labour Court that the 'appropriate Government' in the matter of reference was the State Government was equally not tenable in law since the Sangh was an institution under the authority of the Central Government and as such under Section 2 (a) of the Act the appropriate Government could only be the Central Government.
- (3) The Labour Court had committed an error of law in granting interim relief by way of interim award in favor of 189 persons.
- (4) In any event, there was no good prima facie case in respect of a large number of persons out of the 189 persons in whose favor the interim award had been made. I shall

deal with each of the points seriatim.

Point No. 1.

11. Learned counsel for the petitioner urged that the activities of the Sangh were calculated to advance and directed towards developing a sense of self sufficiency in the matter of one's own use and requirement and to give appropriate training for achieving that object. This was the dominant object with which the Sangh was formed, which, it was contended, would be borne out by the Memorandum and bye laws (Annexure 1). It was further contended that the dominant object of the Sangh was not a profit making one because whatever profits the Sangh earned were ploughed back to the consumers of Khadi. It was also submitted, as already stated at the outset, that the Sangh was formed with the highly praiseworthy object of establishing a nonviolent society free from exploitation. The ideal was to inculcate a sense of the values of life into the society so that the 'self' in the human being may be prompted by the desire for universal good on the basis of truth and nonviolence. Such being the object, the activities of the Sangh in furtherance of that object could not be brought within the embrace of the term 'industry' within the meaning of Section 2 (j) of the Act. Our attention was invited to a large number of decisions on the subject in this connection. Reference was made to a catena of decisions, namely, *State of Bombay v. Hospital Mazdoor Sabha*¹, *National Union of commercial Employees v. M. R. Meher, Industrial Tribunal Bombay*², *The University of Delhi v. Ramnath*³, *Secretary, Madras Gymkhana Club Employees' Union v. Management of the Gymkhana Club*⁴ *Management of Safdar Jung Hospital, New Delhi v. Kuldip Singh Sethi*⁵ *Federation of Indian Chamber of Commerce and Industry v. R. K. Mittal*⁶, *Chief Commr. Delhi v. Federation of Indian Chambers of Commerce & Industry, New Delhi*⁷, and *Dhanrajgirji Hospital v. Workmen*⁸ It is not necessary to go into the details of each of these cases for the reasons I shall set forth hereinafter. Before referring to the case law on the subject, the first thing one has to do is to apply one's mind to what is the substantive intention and meaning of the statute. It is worthwhile to look to Section 2 (j) which defines 'industry' thus:

"'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."

"Industrial dispute" has been defined in Section 2 (k) thus:

"Industrial dispute' means any dispute or difference between employers and employees 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."

These two expressions have been noticed and construed in all the cases referred to above on their distinct facts, in some activities of an institution have been held to be not covered by the term 'industry' while in others it has been held to the contrary. But to borrow the language, with utmost respect, of Bhagwati, J., speaking for the majority in the case of the *Workmen of Indian Standards Institution v. Management of Indian Standards Institution*¹⁰

"The concept of public interest in a modern welfare State, where new social values are fast emerging and old dying out, is indeed so wide and so broad and comprehensive in its spectrum and range that many activities which admittedly fall within the category of

'industry' are clearly designed to subserve public interest."

In the same case the learned Judge has further observed that the concept underlying the observation that Industry is ordinarily something which employers create or undertake is gradually yielding place to the modern concept which regards industry as a joint venture undertaken by employers and workmen enterprise which belongs equally to both. It has further been said that it is difficult to enumerate the possible attributes or features which make an undertaking analogous to trade or business so as to attract the applicability of Section 2 (j) definitively or exhaustively.

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

It is in this context that we should look to the principal objects of the Act. The Act is a piece of legislation calculated to ensure social justice to both employers and employees alike and advance progress of industry by bringing about harmony and cordial relationship between the parties. Indeed the principal objects of the, Act have very succinctly been summed up by S. K. Das, J., speaking for the Supreme Court, in the case of *Workman. D.T.E. v.*

Management, D.T.E^{II}. The Supreme Court held on an examination of the salient provisions of the Act that the principal objects of the Act are

"(1) the promotion of measures for securing and preserving amity and good relations between the employer and workmen;

(2) an investigation and settlement of industrial disputes, between employers and employers. employers and workmen, or workmen and workmen, with a right of representation by a registered trade union or federation of trade unions or association of employers or a federation of associations of employers;

(3) Prevention of illegal strikes and lockouts;

(4) relief to workmen in the matter of layoff and retrenchment; and

(5) Collective bargaining.

The Act is primarily meant for regulating the relations of employers and workmen past,

present and future. It draws a distinction between workmen as such and the managerial or supervisory staff, and confers benefit on the former only." In this context let us assume, as is the petitioner's case that the Sangh was initially formed with the object of establishing a nonviolent society free from exploitation for attempting to bring about a change in the values of life so that the 'self' in the human being may be prompted by the desire for universal good on the basis of truth and nonviolence. The economic pursuits or activities of the Sangh may have had as its goal the establishment of a nonviolent and self sufficient society but that will not make the slightest difference for the purpose of keeping it away from the purview of the term 'industry'. The twentieth century has been called the age of the common man. Whether this be true or not, it is certainly correct to say that there has been an increasing appreciation of the improvement of human needs both industrially and socially. The callous indifference to humanity and the appalling conditions which accompanied the birth and earlier years of industrial revolution have long since gone. We should examine the legacy from the past and from its lessons endeavour to determine the course which we should pursue in the future. It may well be that in an enlightened expression of welfare, with all its implications, lies the secret of industrial harmony and the achievement of a full and satisfactory life for any industrial country. It may be true that Khadi campaign was initiated with a view to boycotting the English textile industrially manufactured cloth. So what? There are sociological and political advantages in encouraging small modern industry, namely, the growth of a middle class of independent smaller scale businessmen. This is a desirable balancing element in a society that values democratic self rule. Thought, if we are to escape disaster, is needed in any specialised fields; we must construct a more accurate and better proportioned conception of the past. Politics and sociology must be explored and must try to see the relation of their studies to each other in the background of the ancient problems of philosophy. One obstacle to clear thinking about the role of small industry in industrial development is the confusion over use of terms. Whether such small scale manufacturing establishments carry on their activities ranging from less than ten to more than a thousand employees, one thing is perfectly clear. We must prefer to think in terms of certain functional characteristics of small industry. relatively little specialization in management lack of access to capital through

that organized securities market; no special bargaining strength in buying or selling in a major market; and often, though not always, a relatively close integration with the local community, through local ownership and management and dependence on nearby markets and sources of supply. Thus even if it be assumed that the Sangh initially was set up to encourage industrial activities on a small scale towards economic self sufficiency as its goal, it was an 'industry' all the same. But, with the ever increasing demand of its products, its activities in the economic field have gained gigantic proportions, which in its turn have had to employ ever increasing number of workers for the production of its goods for fulfilling the material needs and rendering material services to the community

at large. Mr. Ghosh vehemently argued that the products manufactured by the Sangh were meant for the benefit of the consumers of Khadi only. In other words, whatever profit the Sangh made in any particular year was made available by way of concession or rebate over the subsequent period to the consumers of Khadi products. As such, it was not governed by the economic theory of interaction of demand and supply which by itself was sufficient to keep it beyond the purview of the term 'industry'. There is a basic fallacy in this submission. The economists, who declare that every commodity is subject to the immutable law of supply and demand, refuse to recognise that labour consists of men and women and is not just a 'raw material' of industry. For the purpose of judging whether the activities of a particular institution fall within the term 'industry' or not, there is no scope for the application of the economic doctrine of interaction of supply and demand for the price fixation of any manufactured goods.

12. It is needless to discuss each and every case cited at the bar for the purpose of the true construction of the term 'industry' because the entire case law has been reviewed in the latest decision of the Supreme Court in the case of Indian Standards Institution (supra). Having reviewed more or less all the relevant decisions of the Supreme Court, in the Indian Standards Institution case their Lordships of the Supreme Court have summed up what activities can be regarded as 'industry' within the meaning of Section 2 (j). In paragraph 11 of the judgment their Lordships of the Supreme Court have said:

" an activity can be regarded as an 'industry' within the meaning of Section 2 (j) only if there is relationship of employer and employees and the former is engaged in 'business' trade, undertaking, manufacture or calling of employers and the latter, in any calling, service, employment, handicraft or industrial occupation or avocation'. Though 'undertaking' is a word of large import and it means anything undertaken or any project or enterprise, in the context in which it occurs, it must be read as meaning an undertaking analogous to trade or business. In order that an activity may be regarded as an undertaking analogous to trade or business, it must be 'organised or arranged in a manner in which trade or business is generally organised or arranged'. It must not be casual nor must it be for oneself nor for pleasure. And it must rest on cooperation between employer and employees who associate together with a view to production, sale or distribution of material goods or material services. It is entirely irrelevant whether or not there is profit motive or investment of capital in such activity. Even without these two features an activity can be an undertaking analogous to trade or business. It is also immaterial, 'that its objects are charitable or that it does not make profits or even where profits are made, they are not distributed amongst the members'. *Management of FICCI v. Workmen*¹², or that its activity is subsidised by the Government. Again it is not necessary that the employer must always be a private individual. The Act, in terms, contemplates cases of industrial dispute where the Government or a local authority or a public utility service may be the employer.' Madras Gymkhana case at p. 756 of the Report (1968) I SCR 742 = (at p. 563 of AIR 1968 SC 554) _ (1968 Lab IC 547 at p. 556). It also makes no difference that the

material services rendered by the undertaking are in public interest whether an activity is carried on in public interest or not can, therefore, never be a criterion for determining its character as an industry." This being the latest exposition of the law on the subject, which, in its turn, has held that the case of Safdar Jung Hospital (supra) presently holds the field, these decisions must ultimately govern the determination of the present case. It is now too well settled that 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 occupations; and the basic requirement of an industry is that the employers must be carrying on any business, trade, undertaking, manufacture or calling of employers and a systematic undertaking ought to be there for the production and distribution of material goods and rendering material services to the community at large. If they are not, there is no industry as such. Profit making motive is irrelevant for the purpose of determining whether the Sangh is an 'industry' or not. The contention of Mr. Ghose, therefore, that the objectives of the Sangh were laudable and in the interests of the community at large and that there was lack of profit making motive cannot take out the Sangh from the purview of the term 'industry'. As a matter of fact, it has not even been denied that profits are earned but what has been said is that such earnings are ploughed back to the activities of the Sangh for the benefit of the consumers of Khadi. Both factually and legally the contention of learned counsel is unsound. I have already set out at length the findings of fact recorded by the Labour Court with regard to the nature of activities that the Sangh undertakes and pursues, It is not denied that goods are manufactured albeit part of them through handicraft. It is accepted that the workers of the Sangh are appointed by the appropriate authorities of the Sangh managing its affairs and are subject to disciplinary action by the latter. The management of the Sangh disburses salaries or wages to the workers. There can be no hesitation in coming to the conclusion that the relationship of 'employer' and 'employees' exists between the Sangh and its workers. The factories with regard to different items run by the Sangh are registered under the Factories Act. The Sangh employees are enjoying the benefits of the Employees' Provident Fund Act and Scheme. With regard to a substantial portion of the goods sold and income earned, the Sangh is registered under the Central and State Sales Tax Acts and governed by the taxation laws. It produces for selling material goods and renders material services to the community at large. There can thus be no manner of doubt that the activities of the Sangh are well covered by the term 'industry' within the meaning of Section 2 (j).

13. Learned counsel for the petitioner relied rather strongly on the decision of the Supreme Court in the case of the Dhanrajgiri Hospital (1975 Lab IC 1488 (SC)) (supra) for the purpose of contending that the Sangh could not be brought within the sweep of the term 'industry'. The decision in that case is of no avail to the petitioner. It was held therein that Dhanrajgiri Hospital was not carrying on any economic activity in the nature of trade or business. It was not rendering any material services by bringing in any element of trade or business in its activity. The main activity of the Hospital began by imparting training in general nursing and midwifery. The

Hospital in question was to be maintained for the public of Sholapur under the deed creating a charitable trust. As already mentioned earlier, the principal object of the Sangh was not the imparting of training for any charitable purpose, I agree with the finding of the Labour Court holding that the imparting of training to the workers of the Sangh was merely for the advancement of their knowledge and skill for the more beneficial and economic pursuits of the Sangh in supplying material goods and rendering material services to the public at large. The facts of the case of Dhanrajgiri Hospital (supra) cannot, therefore, be pressed into service in aid of the petitioner's case. As I have already mentioned earlier on the authority of the Indian Standards Institution case (supra), the case of Safdar Jung Hospital (1970 Lab IC 413 (SC)) still holds the field. In the latter case, their Lordships of the Supreme Court held that in the collocation of the terms 'trade or business' or 'manufacture' or 'calling' and their definitions, these terms have a definite economic content as excluding professions and are only concerned with the production, distribution and consumption of wealth and the production, and availability of material services. And material services have been held to involve an activity carried on through cooperation between employers and employees to provide the community with services relating to the productivity of a service commercially valuable and organized as an industry. It is not the petitioner's case that rendering of such material services are by any class of persons termed as professionals or avocationists. There is thus no warrant for the application of the propositions that Mr. Ghosh presses us to accept.

14. Learned counsel then laid stress on the fact that the Labour Court was not fully alive to be the dominant object of the activities of the Sangh. I do not feel persuaded to accept this contention. The object and the activities of the Sangh have been considered threadbare and the conclusion arrived at by the Labour Court does not appear to me to be vitiated by any erroneous approach of law.

15. Mr. Ghosh took strong exception to the following finding recorded by the Labour Court towards the end of paragraph 33 of the interim award:

"The enterprise undertaken by the Sangh is not only analogous to trade or business in a commercial sense but it is outright trade or business in a commercial sense."

It was contended that the Labour Court has fallen into an error in recording an ambiguous finding that the activities of the Sangh could be termed 'trade or business'. According to learned counsel there ought to have been a categorical finding as to whether the activities fall within the term 'trade' or the term 'business'. Merely saying that the activities were in the nature of a 'trade' or 'business' went to show that the Labour Court was vacillating in its mind as to whether the nature of the enterprise undertaken by the Sangh was a 'trade' or it was a 'business. This argument though ingenious is hollow. The activities of trade or business means activities of a kind which are carried on in industry or trade. That expression includes any activity of which it can be postulated this is an activity which belongs to in the sense that it occurs in industry or trade from whatever angle one approaches the matter, the crucial question is - what is meant by the activities of 'trade' or 'industry'. For this one has first to look for the ordinary or natural meaning of the phrase. In the case of *National Association of Local Govt. Officers v. Bolton Corporation*¹² the House of Lords was seized with the connotation of the term 'trade' within the meaning of

the term 'trade dispute' in the Conditions of Employment and National Arbitration Order made under Defence (General) Regulations in which the expression 'trade dispute' has been given the same meaning as in the Industrial Courts Act, 1919. By Section 8 of the 1919 Act 'trade dispute' was defined as.

"any dispute or difference between employers and workmen, or between workmen and workmen connected with the employment or non employment or the terms of the employment or with the conditions of labour of any person". This provision is in pari materia with our statutory provision in question. At page 432 Lord Wright held 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. The same inference appears from the short title. It is described as an Act to provide for the establishment of an industrial court in connection with trade dispute. 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 a 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 would not ordinarily be called a tradesman. But the word 'trade' is used in the widest applications in connection with 'trade unions.'

In legislations on the subject of 'trade dispute' or 'trade unions' or 'industrial dispute' it is merely a hair splitting argument and quibbling over words to differentiate between the term 'trade' and 'business'. The term 'business' in matters relating to industrial disputes always connotes an occupation connected with the operations or details of trade or industry."

Whether the activities of the Sangh fall within' the expression 'trade' or 'business', both would equally fall within the definition of the term 'industry' under Section 2 (j) of the Act. Following the line of reasoning adopted by Lord Wright in the observations quoted above, I am of the view that 'trade' and 'business' equally come within the sweep of the definition 'industry' in Section 2 (j) of the Act. There is thus no justification for the argument that unless it be specifically held that the activities fall within the term either 'trade' or 'business' expressly such activities cannot be covered by the definition of the term 'industry'

16. Learned counsel next contended that the evidence of the petitioner's witnesses has not been appreciated in its true perspective and the Labour Court has picked up evidence from here and there, shorn of its context, and this affected the findings of the Labour Court with regard to a jurisdictional fact. Our attention was invited to the evidence of three management's witnesses who were examined before the Labour Court. The evidence of petitioner's witnesses Nos. 1, 2 and 3 has been incorporated in Annexures 10, 9 and 11 respectively. We were taken through these pieces of evidence at great length. Having gone through the evidence I have no hesitation in holding that the criticism levelled by Mr. Ghosh against the Labour Court is rather uncharitable. Nothing could be shown to us in the evidence of the witnesses above mentioned

which has not been considered by the Labour Court. Assuming for the sake of argument that there has been any wrong appraisal of evidence by the Labour Court, I do not think we shall be justified in weighing the evidence for ourselves as if we were sitting in appeal against the order of the Labour Court. This submission of learned counsel must, therefore, also fail.

17. Incidentally it was argued by Mr, Ghosh that extraneous matters irrelevant for the decision of the point at issue had weighed with the Labour Court which vitiated its findings. As learned counsel submitted, such an extraneous matter was the. Labour Court's taking into consideration in paragraph 14 of the impugned award that Mahatma Gandhiji was not an idealist, rather he was a practical man and the entire emphasis of his teachings was emancipation of man from economic slavery. In fact a man could not build his character unless he was free from economic worries. In fact, Mahatma Gandhiji was a practical saint and he is reported to have said, as is quoted in that very paragraph of the award;

"According to me, the economic constitution of India should be such that no one under it should suffer from want of food and clothing. In India we have got millions of people having to be satisfied with one meal a day. you and I have no right to anything that we really have till those millions are clothed and fed better".

This criticism of Mr. Ghosh again, in my view, has no foundation. The aforesaid portion of paragraph 14 is not the Labour Court's observation of Mahatma Gandhiji 's teachings but merely a recital of what the background of the case of the workmen was. The Labour Court has not relied upon the aforesaid contentions of the workmen for the purpose of coming to the conclusions arrived at by it. This part of the case of the workmen is neither here nor there since, in my view, in paragraph 22 of the award the Labour Court is substantially correct in analysing the attributes of the term 'industry' as could be culled from the various decisions of the Supreme Court mentioned above.

18. It was alternatively that assuming that a part of the activities of the Sangh could be covered by the term 'industry' then it was incumbent on the Labour Court to have assumed jurisdiction only in regard to such units of the Sangh as could be brought within the sweep of the definition. I am afraid, this contention is wholly untenable. Where the activities of an organisation are integrated activities and it is difficult to dissect such activities, it would not be proper to say that the Sangh for some purpose is an 'Industry' and for others it is not. There is no foundation for the argument that a part of the activities of the Sangh falls within the term 'industry' and a part is not. Nor indeed could it be shown to us as to who of these 216 workmen, whose cases were pending in reference before the Labour Court. were connected with such activities of the Sangh which could not fall within the purview of the term 'industry'. There is no scope for any bifurcation as was suggested by learned counsel. Reliance in this connection may be placed on the case of *Nagpur Corporation v. Its Employees*¹³ I have, therefore, no hesitation in coming to the conclusion that the Labour Court was perfectly justified in holding that the activities of the petitioner were fully covered by the term 'industry' as defined in Section 2 (j) of the Act.

Point No. 2:

19. Learned counsel for the petitioner argued that in any event the appropriate Government within the meaning of Section 2 (a) of the Act for the purposes of the Sangh was the Central

Government as the Sangh was, if at all an industry, an industry carried on under the authority of the Central Government. It was submitted that the Khadi Act was enacted by the Parliament with the object of providing for the establishment of a commission for the development of Khadi and village industries and for other allied and incidental matters. As already stated earlier, a Commission has been established by the Central Government under the Khadi Act in the year 1957 and is functioning since then. The Sangh, according to the petitioner, is financed by the Central Government through the Khadi and Village Industries Commission which supervises and controls its activities. The Commission has appointed a 'Certification Committee' which regulates the production of Khadi through different affiliated centres and institutions which act according to the regulations framed by the Certification Committee. Any deviation from the regulations so framed renders the affiliation liable to cancellation. In order to ensure that the institutions are functioning strictly in conformity with the rules, the Committee conducts periodical audit and inspection of the institutions. It also investigates into complaints made against such institutions. The Certification Committee has certified several institutions in India including the petitioner Sangh. The account of the Sangh is audited by the Deputy Accountant General of the Government of India. On these averments and assertions the petitioner claims that the Sangh carries on its activities under the authority of the Central Government. It is financed by the Central Government and planned, organised and controlled by the Commission established under the Khadi Act. The Certification Committee constituted under the Khadi Act ensures that it is running strictly in conformity with the rules and regulations laid down by it and other authorities. I do not see any force in this contention of learned counsel. Let us first look to the provisions of the Khadi Act. Section 4 of the Khadi Act lays down that:

"(1) with effect from such date as the Central Government may, by notification in the official Gazette, fix in this behalf, there shall be established a Commission to be called the Khadi and Village Industries Commission which shall be a body corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property and to contract, and may by the said name sue and be sued.

(2) The commission shall consist of not less than three and not more than five members appointed by the Central Government, one of them being nominated by the Central Government to be the Chairman thereof, and the members may be either whole time or part time, as the Central Government may direct."

Section 15 of the Khadi Act lays down that the functions of the Commission shall generally be to plan, organise and implement programmes for the development of Khadi and village industries, and, in particular, the Commission may take such steps as it may think fit to plan and organise the training of persons engaged in the production of Khadi or in village industries and to build up a reserve of raw materials and implements and to supply them to persons engaged in the production of Khadi or in village industries at such economical rates as may be suitable; to provide for the sale and marketing of Khadi or of products of village industries; to encourage and promote research in the technique of production of Khadi or in the development of village industries or to provide facilities for a study of the problems relating to Khadi or village industries; to maintain or assist in the maintenance of institutions for the development of Khadi or village industries: to

undertake. assist or encourage the production of Khadi the development of village industries; to promote and encourage cooperative efforts among manufacturers of Khadi and persons engaged in village industries and to carry out any other matter which may be prescribed. Section 16 of the Khadi Act lays down that in the discharge of its functions the Commission shall be bound by such directions as the Central Government may give to it. Section 17 provides that the Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Commission in each financial year such sums as may be considered necessary for the performance of the functions of the Commission under the Khadi Act. Section 21 provides that subject to any rules that may be made in this behalf, the Commission shall have power to borrow on the security of the Khadi fund or the village industries fund or any other asset for any purpose for which such funds may be supplied. Section 22 lays down that all liabilities incurred by and all contracts entered into with and all matters and things engaged to be done by or for the Central Government in connection with the development of Khadi or village industries at any time after the 14th of January, 1953, and before the Commencement of the Khadi Act shall after such commencement be deemed to have been incurred by, entered into with or engaged to be done by or for the commission. These are the salient features of the Khadi Act which require to be noticed. It would thus be seen from the aforesaid provisions that the Commission is a corporate body. It has the status of a statutory corporation, although its members are to be appointed by the Central Government. The functions of the Commission as envisaged In Section 15 of the Khadi Act cast an obligation upon the Commission to plan, organise and implement programmes for the development of Khadi and village industries in any manner that it thinks fit and suitable. It is true that under the provisions of Section 16 the Commission has been enjoined to be bound by the directions of the Central Government but the provisions of Section 22 make it amply clear that all liabilities incurred by or all contracts entered into and all matters relating to and in connection with the development of Khadi or village industries by the Central Government shall be deemed after the commencement of the Khadi Act to have been incurred, entered into with or done by the Commission itself. Thus the Commission is neither a wing nor a part of the Central Government. Assuming for the sake of argument that the Khadi Commission by any stretch of imagination can be called an institution or an establishment established by or under the authority of the Central Government, there is nothing in the Khadi Act which can be a pointer to the fact that the Sangh is in any way an industry carried on under the authority of the Central Government. The phrase "under the authority of the Central Government" in Section 2(a) of the Act means and it is always intended to apply to industries carried on directly under the authority of the Central Government. In order to come within the purview of that phrase, an industry must be acting (pursuant to the authority of the Central Government as if it were an agent or (servant of the Central Government as its principal. I may rely in this connection on a decision of the Supreme Court in the case of *Heavy Engineering Mazdoor Union v. State of Bihar*¹⁴. In that case their Lordships while considering the true connotation of the

phrase "under the authority of" held that a person is said to be authorised or to have an authority when he is in such a position that he 1977 Lab. I. C./31 III can act in a certain manner without incurring liability, to which he would be exposed but for the authority, or, so as to produce the same effect as if the person granting the authority had for himself done the act There clearly arises in such a case the relationship of a principal and an agent. The words mean pursuant to the authority, such as where an agent or a servant acts under or pursuant to the authority of his principal or master. It has further been held in the absence of a statutory provision. a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a Government Department, will be ordinarily presumed not to be a servant or agent of the State. The fact that a minister appoints the members of directors of a corporation and he is entitled to call for information, to give directions, which are binding on the directors, and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government. An inference that the corporation is the agent of the Government may be drawn where it is performing in substance governmental and not commercial functions. It will be seen from the provisions of the Khadi Act noticed above that the Commission is a body corporate acting on its own behalf as specifically provided in Section 22 of the Khadi Act. Neither can the Khadi commission be brought within the sweep of the phrase "under the authority of" the Central Government nor much less the Sangh, whose activities may be presumed to be supervised by the commission. can be so embraced within that phrase. I. therefore, see no infirmity in the award of the Labour Court holding that the Sangh is not an 'industry' carried on under the authority of the Central Government. The head office of the Sangh being situate at Muzaffarpur within the State of Bihar, the appropriate authority within the meaning of Section 2 (a) of the Act is the State Government. Learned counsel invited our attention to some portions of the evidence of the petitioner's witnesses for the purpose of showing that the Sangh carried on its activities under the authority of the Central Government. Having gone through the evidence, I do not feel persuaded to accept this contention and I hold that the Labour Court was fully justified in rejecting the petitioner's contention that the appropriate Government was the Central Government,

Point No. 3.

20. This point was rather half heatedly argued by learned counsel for the petitioner. Indeed the point is squarely covered by the decision of the Supreme Court in the case of the *Management, Hotel Imperial v. Hotel Workers' Union*¹⁵ That case is a direct authority for the proposition that an award as defined by Section 2 (b) of the Act may be either final or interim. There is no dispute that the interim award has been published as required by Section 17. There is thus no substance in this point of the petitioner.

Point No. 4:

21. With regard to the contention that in respect of a large number of persons out of the 189 persons. in whose favor the interim award has been made, there was no good prima facie case, there seems to be substance in it. Mr. Ghose relied upon a Bench decision of this Court in the

case of the Management of the *Bihar State Electricity Board. Patna v. Workmen of the Bihar State Electricity Board*¹⁶ In that case it was decided that in order to grant interim relief under an interim award under Section 2 (b) of the Act, the Tribunal must determine that there is a good prima facie case in favor of the Workmen for final adjudication and that on the facts of the particular case an interim relief by way of interim award is necessary. Although, as already stated at the outset, a large number of instances of cases either under the Indian Penal Code or under the provisions of Section 107 of the Code of Criminal Procedure has been set out in the petition. I would not have felt inclined to go into that question but for the single fact to which I am referring. The Labour Court has accepted in principle that a good prima facie case must be there to entitle a workman to an interim relief. Applying that principle in paragraph 54 of the award, it is held that such workmen against whom criminal cases are pending for consideration were not entitled to interim relief. In paragraph 57 of the award the workmen who have been denied such an interim relief have been listed, who are 27 in number. Thus out of the total number of 216 workmen, interim relief has been granted in favor of 189 persons only. On the admitted facts of the case there are many other workmen against whom criminal cases for substantive offences are pending consideration in criminal courts. In Paragraph 22 of the supplementary affidavit a list of 93 workmen has been given, all of whom are accused in one or more criminal cases for having committed substantial criminal offences, such as, defalcation, theft, robbery, assault etc. etc. with regard to property or authorities of the Sangh, Such persons as enumerated in paragraph 22 are those whose names are mentioned at serial nos, 1, 2, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 28, 31, 33, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 86, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 108, 113, 114, 116, 127, 129, 156, 157, 176, 183, 197, 198 and 202 of the enclosure to the reference made to the Labour Court. This fact is not categorically denied in the counter affidavit filed on behalf of the Union. Applying the test which the Labour Court has adopted for the purpose of excluding the 27 workmen from the benefit of the interim relief, I do not see any justification for treating the aforesaid 93 persons on any different footing. I am, therefore, constrained to hold that the 93 workmen mentioned at the serial numbers given above should also be denied the grant of interim relief on the same ground. I, therefore, direct that the following 93 persons are not entitled to an interim relief:

Sri Satyanarain Thakur (Sl. 1), Sri Rajdeo Karmi (Si. 2), Sri Dharmanarain Misir (51.7), Sri Nawal Kishore Sharma (S1.8), Sri Sambhu Mahto (S1.9), Sri Devendra Mahto (S1.10), Sri Gunanand Jha (Sl. 12), Sri Md. Israil (Sl. 13), Sri Jogendra Jha (S1.14), Name not mentioned (S1.15), Sri Sibnandan Choudhary (S1.16), Sri Srikant Choudhary (S1.17), Sri Surat Safi (51.18), Sri Sukhdeo Thakur (51.20), Sri Jagdeo Safi (S1.21), Sri Bisu Choudhary (S1.22), Sri Raghuni Marar (51.23), Sri Mu Mulia (51.24), Sri Jibach Safi (S1.25), Sri Saghuni Mandal (S1.26), Sri Basudeo Thakur (S1.28), Sri Bilat Paswan (S1.31), Sri Jagdish Safi (S1.33), Sri Satyanarain Jha (S1.35), Sri Anirudh Kare (S1.36), Sri Bikeshwar Jha Sri Rameshwar Jha (S1.39), Sri Bahuagf Bhukhia (S1.40), Sri Bidhinath Thakur (Si 41), Sri Ramakant Choudhary (S1.42), Sri Sambhu Bhandai (S1.43), Sri Bhadaf Bhukhia (51.44), Sri Bhuggi Choudhary (S1.45), Sri Sitaram Safi (S1.46), Sri Bhola Safi (S1.47), Sri Sone Yadav (Si. 48), Sri Lakhan Paswan (Si. 49), Sri Budh Kurga (Sl. 50), Sri Tripathi Yadav (Si. 51), Sri Kusheshwar Mandal (S1.52), Smt.

Sita Devi (S1.53), Smt. Saraswati Devi (S1.54), Sri Saudagar Thakur (S1.55), Sri Swaruplal Thakur (S1.56), Sri Rattilal Choudary (S1.57), Sri Hardeo Safi (S1.59), Sri Gangadhar Jha (S1.62), Sri Syamsundar Prasad (S1.63), Sri Manendra Sharma (S1.64), Sri Lakhan Jha (S1.65), Sri Jagdish Ram Bechain (S1.66), Sri Shibprasad Yadav (S1.67), Sri Ramakant Jha (S1.68), Sri Siyaram Thakur (S1.69), Sri Rajendra Mahto (S1.70), Sri Jaikishore Mahto (S1.71), Sri Krishnakant Das (S1.72), Sri Jai Kishore Patel (S1.73), Sri Ramapati Rai (S1.74), Sri Mithilesh Kumar (S1.75), Sri Awadhbihari Prasad (S1.76), Sri Ramparichan Mahto (S1.77), Sri Anup Kamat (S1.78), Sri Jawahar Choudhary (S1.79), Sri Satyanarain Thakur (S1.86), Sri Anand Kishore Sahi (S1.90), Sri Santinarain Das (S1.91), Sri Sarjug Ram (S1.92), Sri Bhudeni Thakur (S1.93), Sri Satyanarain Lal Das (S1.94), Sri Upendra Mahto (S1.95), Sri Surendra Singh (S1.96), Sri Birendra Kimi (S1.97), Sri Ganga Pal Yadav (S1.98), Sri Bhushan (S1.99), Sri Khagendra Pd. Verma (S1.100), Sri Binode Bihari Saran (S1.101), Sri Sitaram Rai (S1.102), Sri Harinandan Mishra (S1.103), Sri Balanand Mishra (S1.104), Sri Ramendra Pd. Mandal (S1.108), Sri Digambar Kumar (S1.113), Sri Ramballabh Lal (S1.114), Sri Sachhidanand Sarma (S1.116), Sri Raghubansh Jha (S1.127), Sri Parmanand Mishra (S1.129), Sri Tulsiram Mehtar (S1.156), Sri Rambalak Chaurasia (S1.157), Sri Basudeo Mahto (S1.176), Sri Daroga Paswan (S1.183), Sri Bhairab Nath Jha (S1.197), Sri Ramudgar Jha (S1.198) and Sri Janakbihari Choudhary (S1.202), I must hasten to add that I may not be misunderstood to have expressed any concluded opinion that none of such workmen may not have any case at all. That of course will be the subject matter of final adjudication. The refusal to grant interim relief by way of interim award in favor of such persons who have been deprived of such benefit shall certainly be without prejudice to the merits of their cases during the final adjudication of the dispute referred.

22. In the result, this application is allowed only to this extent that the 93 workmen enumerated above shall not be entitled to any interim relief. With regard to the rest, however, the impugned award is upheld. This application succeeds in part and only that portion of the award by which the aforesaid 93 workmen have been granted interim relief is quashed. Since the success is divided, there shall be no order as to costs.

S.N.P. SINGH, C.J.

23. I agree Application allowed partly.

application allowed partly.

Cases Referred.

¹(AIR 1960 SC 610)

²(AIR 1962 SC 1080)

³(AIR 1963 SC 1873)

⁴(AIR 1968 SC 554 = (1968 Lab IC 547)

⁵(AIR 1970 SC 1407) = (1970 Lab IC 1172)

⁶(AIR 1972 SC 763) = (1972 Lab IC 413)

⁷(AIR 1974 SC 1527 = (1974 Lab IC 1004)

⁸(AIR 1975 SC 2032 = ((1975) 2 Lab LJ 409) = (1975 Lab I.C. 1488)

¹⁰(AIR 1976 SC 145 at p. 153)= (1976 Lab IC 137 at p. 145)

¹¹(AIR 1958 SC 353 at p. 358)

¹²(1972) 2 SCR 353 at p. 376 = (AIR 1972 SC 763 at p. 777 = 1972 Lab IC 413)

¹²(1942) 2 All ER 425

¹³(AIR 1960 SC 675)

¹⁴(AIR 1970 SC 82) = (1970 Lab IC 212)

¹⁵(AIR 1959 SC 1342)

¹⁶(1971) 1 Lab LJ 389 (Pat)