

Bombay Panjrapole, Bhuleshwar vs The Workmen And Another on 16 August, 1971

Equivalent citations: 1971 AIR 2422, 1972 SCR (1) 202, AIR 1971 SUPREME COURT 2422, 1971 LAB. I. C. 1401, 1971 2 LABLJ 393, 1973 MAH LJ 753, 1973 MPLJ 879, 1972 (1) SCJ 149, 1972 2 SCJ 683, 1972 2 ITJ 568, 1972 UPTC 181, 24 FACLR 87, 40 FJR 126, 1972 (1) SCR 202, 1972 (1) SCR 230, 1975 BOM LR 465

Author: G.K. Mitter

Bench: G.K. Mitter, P. Jaganmohan Reddy

PETITIONER:

BOMBAY PANJRAPOLE, BHULESHWAR

Vs.

RESPONDENT:

THE WORKMEN AND ANOTHER

DATE OF JUDGMENT 16/08/1971

BENCH:

MITTER, G.K.

BENCH:

MITTER, G.K.

REDDY, P. JAGANMOHAN

CITATION:

1971 AIR 2422

1972 SCR (1) 202

1971 SCC (3) 349

ACT:

Industrial Disputes Act, 1947-Section 2(j) - 'Industry'-A Panjrapole started initially as a charitable institution but later organised commercially-If "Industry".

HEADNOTE:

The appellant Panjrapole was started in 1834 as a charitable institution for the care and protection of animals. it expanded its activities considerably over the years. The institution gradually diversified its objects from only tending to the sick, infirm and unwanted cattle by adopting a policy of keeping cattle not merely for their own sake but

for the sake of improving the cattle population in order to get large quantities of milk for sale and thereby get an income which would augment its sources. The institution was using stud bulls for the purpose of breeding healthy cattle including cows so as to be able to make a sizable income from the sale of milk. The value of the milk sold was considerable compared to the value of milk supplied to the sick and infirm cattle of the institution. The expenses for treating the sick animals was also very little compared to the total expenses of the Institution. A large number of workers were employed at the institution. They raised an industrial dispute in relation to their wages and other service benefits. The dispute was referred for adjudication to the Industrial Tribunal. It was contended by the Appellant that the Institution was a charitable institution and therefore was not an 'industry' within the meaning of s. 2(j) of the Industrial Disputes Act. The Tribunal found that the activities of the institution in connection with its movable property and collection and sale of milk to be an "industry" while the maintenance of lame, infirm and sick cows, dogs and other animals was held not to constitute an "industry".

A petition under Art. 227 was moved in the High Court for quashing the award of the Industrial Tribunal but the same was summarily rejected. Dismissing the appeal,

HELD: On the facts and circumstances of the case, the Bombay Panjrapole is an "Industry" within the meaning of Sec. 2(j) of the Industrial Disputes Act. The activities of the Panjrapole, though charitable at the beginning, was not exclusively so in later years, and the later activities show that it was carried on as a business concern. Even the value of the milk supplied for the last 3 or 4 years itself was well in excess of Rs. 2 lakhs per annum and this could only be possible if the cows, and buffaloes had been kept and maintained not merely to keep them alive but with the idea of getting as much production out of them as possible and the Panjrapole was run like a dairy firm. [223H]

State of Bombay v. The Hospital Mazdoor Sabha, [1960] 2 S.C.R. 866, Safdar Jung Hospital, New Delhi v. K. S. Sethi & Management of M/s T. B.- Hospital, New Delhi v. The Workmen, A.I.R. 1970 S.C. 1407. Gynmkhana Club Union v. Management, [1968] 1 S.C.R. 742, Lalit Hari Ayurvedic College Pharmacy v. Its Workers Union, A.I. R. 1960 S. C. 1261, Madras Panjrapole v. Labour Court, [1960] 2 L. L. J. 686, Workmen Employed in Madras Panjrapole v. Madras Panjrapole [1962] 2 L.L.J. 472, Cricket Club v. Labour Union, ' [1969] 1 S.C.R. 60, Harinagar Cone Firma v. State of Bihar, [1964] 2 S.C.R. 458, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1331 of 1966.

Appeal by special leave from the order dated January 20, 1966 of the Bombay High Court in Special Civil Application No. 54 of 1966.

D. V. Patel and L N. Shroff for the appellant. G. P. Pai, Bhajan Ram Rakhiani and R. K. Khanna, for respondent No. 1.

The Judgment of the Court was delivered by Mitter, J. The question involved in this appeal by special leave from an order of the Bombay High Court rejecting summarily a petition -under Art.227 of the Constitution for the issue of a writ of certiorari or other appropriate writ for examining the legality of the award made by the Industrial Tribunal, Maharashtra on July 27, 1965 and published in the Maharashtra Gazette on August 19, 1905 and for quashing the same appears to be one of first impression so far as this Court is concerned.

The appellant before e this Court is an institution which came into existence as far back as 1834. It originated in the desire of certain Hindu and Parsee gentlemen of the City of Bombay to put a stop to the practice of killing of stray dogs by the stray dogs by the sepoys of the East India Company. the deed of October 18, 1834 shows that certain Hindus , Parsees and Mahajuns had resolved to start a Panjrapole with suitable buildings by raising subscription and also by promising to pay certain fees on stated mercantile commodities to the Panjrapole to be established for the keeping of stray cattle and other animals and for protecting their lives. This was followed by a deed of declaration of- trust executed on 2nd November, 1850. This shows that the institution mentioned in the earlier document had been established and the management of its funds had been placed in the hands of certain Banians. under the superintendence of Sir Jamshedjee Jeejeebhoy and that out of the surplus funds collected Rs. 75,057/- had been invested in the purchase of Government Promissory notes. The trustees were -to stand possessed of the said notes and interest and dividends thereof upon trust for the use and benefit of the said institution.

On 2nd November, 1850 a deed of assignment and declaration of trust in favour of panjrapole was executed by Sir Jamshedjee Jeejeebhoy to Khimchand Motichand. This document shows that a part of the surplus funds had been invested in the purchase of several pieces or parce Is ,of lands, houses etc. and the new trustees were to stand possessed of the same upon trust for the use and benefit ,of the said institution. Another trust deed was executed ,on 5th September, 1851 by Khimchand Motichand, Sir Jamshedjee Jeejeebhoy and others. This document shows that the institution was then possessed of considerable wealth comprising of Government promissory notes, houses, lands and other immovable estate in the Islands of Bombay, besides cash balances.

The funds of the institution appear to have been augmented further-under a deed of 10th June, 1871. According to this document certain charitably disposed persons, Hindus and Parsees, had raised a fund for releasing animals in Surat meant for slaughter on the occasion of Bakrild and Id-E-Kurbani. The trustees of the said fund being desirous of transferring the sums in their hands with all accumulations of interest, income etc. and also the trust thereof to the trustees of the Bombay Panjrapole had requested the trustees of the said Panjrapole to become the trustees of Surat

Bakri-Id fund to which the latter had a in Surat meant for slaughter on the occasion of Bakrild and Id-E-Kurbani. The trustees of the said fund being desirous of transferring the sums in their hands with all accumulations of interest, income etc. and also the trust thereof to the trustees of the Bombay Panjrapole had requested the trustees of the said Panjrapole to become the trustees of Surat Bakri-Id fund to which the latter had agreed. This document shows further that the trustees of the Bombay Panjrapole had agreed to use the said funds towards the purchasing, releasing and redeeming from slaughter some of the cows, sheep and other animals intended or likely to be sacrificed at Surat on the Bakrid or Id-Kurbani occasions and for conveyance of the animals so purchased to be kept there according to the custom and rules of that institution. In 1915 the Government declared the institution as an infirmary under the Prevention of Cruelty to Animals Act (IX of 1890). it would appear that the Bombay Panjrapole expanded its activities considerably over the years and had besides its original seat at Bombay, branches at three other places viz., at Raita, Bhiwandi and Chembur Cattle, birds and other animals were kept and maintained at all these places. A very large number of persons was pursuing manifold activities at the said places. Latterly the workers of the institution were not satisfied with their wage scales and other service conditions. On the basis of the report submitted by the Conciliation Officer under sub-s.(4) of s.12 of the Industrial Disputes Act the Government of Maharashtra referred the dispute for adjudication to the Tribunal constituted under a Government notification. An order of reference was made on 25th June, 1963 and the heads of disputes were, the wages, privilege, sick and casual leave, bonus, gratuity and reinstatement of certain workmen. In the written statement filed by Panjrapole it was stated inter alia

(a) The main aims and objects of the institution were purely charitable. Whatever income the institution had was not all to be distributed either to the donors or the trustees. It was wholly and solely for the maintenance and treatment of animals of the Bombay Panjrapole. To achieve the above objects the means to be adopted were

(i) maintenance of a shelter house for aged and unserviceable animals;

(ii) the feeding and treatment of all animals entrusted to the institution either by the owners anxious to pension their old animals or rescued by philanthropic persons from the hands of butchers and the protection of animals remanded by magistrates;

(iii) the breeding of bulls under ideal and sanitary conditions;

(iv) the maintenance of a dairy farm with special attention to proper feeding, accommodation and water supply, the proceeds to go to the benefit of other animals of the Panjrapole; and 20 6

(v) bringing up of calves of the young cows under healthy conditions.

(b) The Managing Committee of trustees of the institution was advised that in fulfilment of their primary and only object of maintaining sick and infirm cattle and dogs etc. it was necessary that they should have healthy food and nutrition. Since milk from outside would not fulfil that condition it was decided to upgrade the infirm cattle and rear them into good animals so as to get good and

pure milk for the inmates of the Panjrapole. Thus the milk that was produced and remained surplus after feeding the old cows, motherless calves and dogs and other such animals was sold to members of public instead of being thrown off. The income derived therefrom was again utilised only after maintenance of the Panjrapole animals. The sale proceeds of the milk was never utilised nor meant for the benefit or the profit of the donors or of trustees nor was it produced and sold for the purpose or satisfying human needs or desires or with any object of rendering material service to the community.

The cows which yielded milk were kept by the Panjrapole till the end of their lives. The milk derived from them could only be considered as natural and incidental product in the maintenance of cows.

It was submitted on the basis of the above that essentially object with which the institution received animals was not for doing service to their owners or others but to the animals themselves. The Tribunal examined meticulously the activities of the institution over a number of years. The workers served various interrogatories on the trustees to elicit from the various facts relating to the income by way of rent from building etc. the income from milk and milk products, the income from sale of other commodities, the number and categories of animals in the Panjrapole, the number of animals, if any, purchased, the number of dry -and wet cows owned by the -Panjrapole and the number of stud bulls either purchased by or bred at the Panjrapole for the last ten years. The society answered all the particulars. The chart below prepared by the respondent shows the total cattle strength of the Panjrapole in all its four branches comprising of productive animals (whether milch cows milch buffaloes, stud bulls and working bullocks), the number of unproductive animals, including cows, buffaloes, buffalo calves, heifers and calves and bullocks. The chart was compiled from the documents disclosed by the appellant and contains the figures for the years 1958 to 1962 --

Total strength in the following years.

	1958	1959	1960	1961	1962-
Total strength					
Bombay	149	117	150	201	214
Raita	833	595	508	604	538
Bhiwandi	501	653	503	408	426
Chambur	191	233	272	275	281

Total 1,674 1,598 1,533 1,488 1,459

Sick, old and infirm					
Bombay.	-	-	-	-	-
Raita	32	19	10	16	31
Bhiwandi	424	364	132	150	171
Chambur.	-	-	-	-	-

----- Total 466 25 % 383 20% 142 10% 166 10% 202 15%

Young animals

Bombay	-	-	-	-	-
Raita	181	44	120	50	36
Bhiwandi	6	47	5	99	59
Chambur	56	87	79	93	100

Total 243 178 204 242 185

Other cattle not sick

Bombay	149	117	150	201	214
Raita	620	532	488	538	471
Bhiwandi	71	242	366	159	196
Chambur	135	146	193	182	181

Total. 975 1,037 1,197 1,080 1,602

----- The following chart was pared by the respondents showing the values of the milk supplied to the animals as also the amounts fetched by sale of the surplus milk for the same years.

Chart.

----- Year Own consump- Sale Total Percentage tion.

Rs .	Rs .	Rs .	of sale approxima- tely
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1 2 3 4 5

1958	2,681	1,49,854		
	1,314			
	3,995		1,53,849	2. 6%

1959	5,256			
	6,716			
	5,475			
	17,447	1,69,465	1,86,912	9. 5%
1960	1,755			
	6,570			
	2,686			
	11,011	2,13,117	24,1185%	
1961	2,046			
	3,286			
	3,504			
	8,836	2,23,095	2,31,9314	4%
1962	1,954			
	4,555			
	3,650			
	10,159	2,30,043	2,40,2024%	

----- The facts found by the Tribunal may be summarised as follows (1) At the end of the year 1962 there were altogether, 445 cows, 48 bulls, bullocks and oxen, other cattle (cows and bullocks) 508, calves 495, dogs 160, goats and sheep 32, horses 12, hares 18, cocks, hens and ducks' 18 and parrots 8 : the total number was 1754.

(2) The total income for the year was Rs. 6,64,043 including the amount of Rs. 1,73,583 received by way of donation. The income proper was thus Rs. 4,90,459., 20 9 (3) Some lands of the institution were under its personal cultivation. The sale proceeds of the yield thereof was Rs. 6,492. The rent fetched by the immovable property was Rs. 2,20,549. The milk yielded by the cows was regularly collected and sold, the sale proceeds for the year being Rs. 4,30,034. A large number of workmen was employed to attend to the cows and to feed them, to. milk the cows and to carry and sell the milk to the public.

(4) The number of cows yielding milk at the end of the year was 242. At that time there were 75 pregnant cows. There were 57 other cows, 101 grown-up calves (female) and 91 other small calves (female) all described as "reserved". In the opinion of the Tribunal all these calves would in course of time grow into cows.

(5) The institution maintained some stud bulls. Besides there were bullocks which were used for plying the carts or for cultivation of the lands of the institution. (6) There were 36 heads of cattle described as arrivals from Bombay. There were another 87 cows described as "danger"; the rest of the cattle (cows and bullocks) were 57 lame and blind, 177 weak, 51 infirm, quite infirm 80 and sick 108, the total of this category being 473; including the "danger" cows the total was 560. These animals depended entirely on the charity of the institution. The Tribunal found the activities of the institution in connection with its movable property and collection and sale of milk to be an industry while the maintenance of danger cows, blind, lame, infirm and sick, the dogs and other animals did not constitute an industry.

As already noted, the application under Art. 227 by the Panjrapole to the Bombay High Court was dismissed summarily and therefore we do not have the benefit of a judgment of the High Court. As

the records stand we must proceed on the facts found by the Tribunal and such light as is thrown thereon by arguments of counsel.

Before looking into the relevant authorities on the subject, we may note the points canvassed in support of or against the appeal by learned counsel on either side. Referring to the trust deeds it was argued on behalf of the appellant that the essential purpose of the institution was to keep and foster animals which were either rejected by their owners as old and infirm or of no use to them as suckling calves, dry -cows etc. It is not necessary to take into account the other animals which were maintained by the institution. Leaving out of account the number of dogs kept, the number of other animals was insignificant. It was argued that although the sale of milk produced a fair amount of income, certain portion of it was necessary for the maintenance of the sick and infirm animals and the sale of the balance of the milk ought to be regarded as incidental to the keeping of cows thrown on the hands of the institution and ought not to lead to an inference that the institution was pursuing an industry. With regard to the immovable properties, it was said that they had been purchased out of surplus funds in the hands of the institution over 50 years back and on a conspirator of the activities of the institution it should be held that it was merely doing charity to animals and it was not producing food or giving service to humans to constitute its activity as an industry within the meaning of s.2(1) of the Industrial Disputes Act.

Learned counsel for the respondent drew our attention to certain facts which according to, him went to show that so far as the activity of keeping cattle, specially cows and she-buffaloes was concerned, there could be little doubt that it was pursued as an industry. He handed over two charts containing analysis of the cattle population as culled from the documents placed before the Tribunal by the institution itself. The total strength of cattle in all the four branches of the institution in the year 1958 was 1674, 1598 in the year 1959, 1533 in the year 1960 and 1488 in 1961 and 1459 in 1962. The sick, old and infirm cattle for the year 1958 was 456 or roughly 25 per cent of the total strength. Young animals numbered 243 and other cattle which were not at all sick was 975 in number. The percentage of sick, old and infirm cattle in the year 1959 was roughly 20 % in. the year 1960 and 1961, 10 per cent and in the year 1962 15%. The rest of the cattle according to counsel were neither old nor infirm but were either producing milk or being put to use immediately or capable of yielding milk or work in the future. Another chart handed over by him went to show that the total value of milk produced in the year 1958 was Rs. 1,53,849 and leaving out of account of Rs. 3,995 being the value of milk supplied to the sick cattle, the institution derived an income of Rs. 1,49,854/- from the sale of milk. The corresponding figures for 1959 were total sales Rs. 1,86,912, value of milk consumed Rs. 17,447, income from milk, Rs. 1,69,465. The figures for 1960 were Rs. 2,24,-118, Rs. 11,011 and Rs. 2,13,117/-; those for 1961 were Rs. 2,31,931, Rs. 8,836 and Rs. 2,23,095/-. The figures for the last year 1962 were Rs. 2,40,202, Rs. 10,159 and Rs. 2,30,043. Thus according to the above figures, the percentage of milk given to the animals out of the total production was 26 in 1958, 95 in 1959, 5 in 1960 and 4 in the years 1961 and 1962. Learned counsel drew our attention to the figures of expenses of tending the sick and infirm cattle either by employment of hospital workers or medical expenses and compared the same with the total expenses of the institution and the number of men employed. The value of medical relief to animals either by way of salary to workers, dearness allowance paid to them, medical expenses and feeding of milk to the animals for the Bombay Panjrapole in the year 1961 was Rs. 11,762, for Raita Rs. 5,551, for Chembur Rs. 5,028 and for

Bhiwandi Rs. 28,805. The expenses of feeding and maintenance of sick animals for the said branches were Rs. 1,825, 13,596, 7,554 and 81,464. But it is pertinent to note that medical expenses accounted for very small sums, namely, Rs. 1,267 for Bombay, Rs. 559 for Raita, Rs' 1,696 for Chembur and Rs. 552 for Bhiwandi. The figures of medical expenses for the year 1962 were equally negligible. The number of people employed for giving medical relief at the Bombay Panjrapole in the year 1961 was only 7, namely, a doctor, a dresser, 4 coolies and other workers and a sundry worker. Their total salary came to Rs. 6,000 besides dearness allowance of Rs. 2,448. Similarly at Raita there were a doctor, two coolies, two dressers and sundry workers and expenditure was only Rs. 552 out of the total expenditure on all these items Rs. 4,992. It was argued on the basis of these figures that if the object of the Panjrapole was only to maintain and- treat the old, diseased or infirm or rejected cattle on its hands acquired from different sources, the number of men employed would be very small and the milk required for the sick and infirm cattle could be had from only a few milch cows and she-buffaloes. It was urged that the fact that a large number of milch cattle were to be found every year among the cattle population yielding milk regularly of the value of over Rs.. 2,00,000 for the last 3 or 4 years went to show that the institution was pursuing an activity more or less like that of, a dairy farm. It was maintaining a number of stud bulls and had actually purchased one, the obvious object behind it being improving the cattle wealth of the institution by the production of good and healthy cattle, the females of which would come to yield milk in future. It was said that the value of milk sold could not be as high as disclosed by the figures unless the institution was getting a number of milch cattle every year to replace those which were going dry for the time being. This could only be possible if the institution was in a position to keep up its number of milch cattle from the young ones either given to the Panjrapole or those which were bred at the Panjrapole. The only difference between the Panjrapole and a well organised dairy farm was that the Panjrapole was not buying milch cattle of good quality nor destroying or getting rid of any which were found to become useless. As the objects of the institution did not permit it to get rid of any cattle it undoubtedly had to maintain whatever cattle came to it but nevertheless the activities displayed by the facts were enough to show that it was being run on the lines of a business or an undertaking, though

-not of the normal type of a well organised dairy business. In our view the arguments of learned counsel for the respondent have considerable force. The main heads of the income of the institution were income from immovable properties, donation from charitably disposed members of the public and the sale of milk. No doubt the immovable property had been acquired many years back from the surplus funds in the hands of the trustees. These were old houses and buildings but the Panjrapole was maintaining them in tenantable condition by incurring considerable expenses every year over the repairs. The more significant factor was the steadily growing income from the sale of milk derived from milch cows and buffaloes, the number of which though not steady was always considerable. Regard must also be had to the written statement of the institution itself before the Tribunal showing that the Managing Committee of the trustees had decided some time back to upgrade the infirm cattle and rear them into good animals so as to get good and pure milk for the inmates of Panjrapole. In fact however the upgrading was to such an extent that the milk yielded always was far in excess of the needs of the inmates of the Panjrapole. Although the sale proceeds of the milk was never utilised nor was ever meant for the benefit or profits of the donors or trustees, the very production of it in such large bulk wholly unrelated to the needs of the sick cattle showed

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

We have then to consider whether on the above facts an inference ought properly to be drawn that the activities of the Panjrapole constituted an industry. It is not necessary to go through the plethora of cases decided by this Court to find out whether the Tribunal had come to a proper conclusion. Although there is no decision of this Court arising out of the affairs of a Panira Dole, there are several dealing with the question as to whether hospitals constituted industries. The contention of learned counsel for the appellant W. as that the main and chief object of the appellant institution being the keeping and fostering of animals incidental activities ought to be disregarded and the institution ought to be considered as a hospital. If the activities relating to the -production of milk could be said to be incidental to the maintaining of sick, infirm and diseased or rejected cattle, the argument would, in our opinion, rest on solid foundation.

2 1 4 At the time when the application under Art. 227 of the Constantine was presented before the Bombay High Court, the decision of this Court in State of Bombay v. The Hospital Mazdoor Sabha (1) held the field and it can be assumed that it was on the strength of this decision that the Bombay High Court did not feel called upon to examine the merits of the case by issuing a rule. In the 'Hospital Mazdoor Sabha's case (supra) the dispute arose out of the retrenchment of respondents 2 and 3 before this Court who' had been engaged as ward servants in the J.J. Group of Hospitals, Bombay under State control and management without payment of compensation as required by S. 25-F(b) of the Industrial Disputes Act. The decision of this Court shows that there was a group consisting of five hospitals under the administrative control of the Surgeon General of the appellant and its day to day affairs were conducted and controlled by a Superintendent who was a full-time employee of the appellant. The residential staff including the Resident Medical Officers, Horsemen, Nurses etc. were all full-time employees of the appellant and their salaries were drawn on the establishment pay bills of the appellant and paid entirely by the appellant. According to this Court :

"This group serves as a clinical training ground for students of the Grant Medical College which is a Government Medical College run and managed by the appellant for imparting knowledge of medical, sciences leading to the Degrees of Bachelor of Medicine and Bachelor of Surgery of the Bombay University as well as various Post-Graduate qualifications of the said University and the College of Physicians and Surgeons, Bombay; the group is thus run and. managaed by the appellant to provide medical relief and to promote the health of the people of Bombay."

On the question as to whether the activities of this group of hospitals would be covered by the definition of 'in- dustry' in s.2(j) of the Industrial Disputes Act, the Court ,observed (see-at p. 878)

"In considering the question as to whether the group of Hospitals run by the appellant undoubtedly (1) [1960] 2 S.C.R. 866.

21 5 for the purpose of giving medical relief to the citizens and for helping to impart medical education are an undertaking or not, it would be pertinent to enquire whether the activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their conventional sense..... Trust the character of the activity involved in running a hospital brings the institution of the hospital within s.2(j). Does it make any difference that the hospital is run by the Government in the interpretation of the word "undertaking" in s.2(j)? In our opinion, the answer to this question must be in the negative. It is the character of the activity which decides the, question as to whether the activity in question attracts the provision of s.2(j); who conducts the activity and whether it is conducted for profit or not do not make a material difference."

As to the attributes which made the activity an under taking it was stated (see at p. 879) :

"It is difficult to state these possible attributes denitely or exhaustively; as a working principle it may be stated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such an activity generally involves the co-operation of the employer and the employees; and its object is the satisfaction of material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual or must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organised or arranged, the condition of the co-operation between the employer and the employee necessary for its success and its object to render material service to the community can be regarded as some, of the features which are distinctive of activities,, 5-- -Ml 1245 Sup. Cl/71 to which s.2(j) applies. Judged by this test, there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of Hospitals in question."

The recent decision of this Court in Safdar Jung Hospital, New Delhi v. K. S. Sethi and Management of M/s T.B. Hospital, New Delhi v. The Workmen (1) is a pointer in the contrary direction. There was also another appeal relating to the Kurji Holy Family Hospital. The Court proceeded to consider the general proposition whether a hospital could be considered to fall within the concept of industry in the Industrial Disputes Act and whether all hospitals of whatever description could be covered by the concept or only some hospitals under special conditions. According to this Court in Safdar Jung Hospital case ,(see p.1412 paragraph 1.3) "an industry is to be found when the employers are carrying on any business, trade , under-

taking, manufacture or calling of employers. If they are not, there is no industry as such."

The Court referred to the decision of this Court in *Gymkhana Club Union v. Management* (2) and the conclusion therein that :

"Primarily, therefore, industrial disputes occur when the operation undertaken rests upon co-operation between employers and employees with a view to production and distribution of material goods, in other words, wealth, but they may arise also in cases where the co-operation is to reduce material services. The normal cases are those in which the production or distribution is of material goods or wealth and they will fall within the expressions, trade, business or manufacture."

With regard to trade and business it was said :

"Business too is a word of wide import. In one sense it includes all occupations and professions. But in the collocation of the terms and their defi-

(1) A. I.R. 1970 S.C. 1407. (2) [1968] 1 S.C.R. 742.

nitions these terms have a definite economic content of a particular type and all the authorities -of this Court have been uniformly accepted as excluding professions and are only concerned with the production, distribution and consumption of wealth and the production and availability of material services." With regard to the *Hospital Mazdoor Sabha* case (1) was remarked (see p. 1414) "The case proceeds on the assumption that there need not be an economic activity since employment of capital and profit motive were considered unessential. It is an erroneous assumption -that an economic activity must be related to capital and profit-making alone. An economic activity can exist Without the presence of both. Having rejected the true test applied in other cases before, -the test applied was 'can such activity be carried on private -individuals or group of individuals?' Holding that a hospital could be run as a business proposition and for profit, it was held that a hospital run by Government without profit must bear the same character. With respect, we do not consider this to be the right test. This test was employed to distinguish between the administrative functions of Government and local authorities and their functions analogous to business but it cannot be used in this context. When it was emphasised in the same case that the activity must be analogous to business and trade and that it must be productive ,of goods or their distribution or for producing ,material services to the community at large or a part of it, there was no room for the other proposition -that privately run hospitals may in certain circumstances be regarded as industries."

This Court held that the *Hospital Mazdoor Sabha* case(1) "took an extreme view of the matter which was not justi- fied". With regard to the activities of the individual hospitals it was said the *Safdar Jung* hospital had not embarked on an economic activity which could be said to be analogous to trade or business. There was no (1) [1960] 2 S.-C. R. 866, evidence that it was more than a place where persons could get treated. This was a part of the functions of Government and ,the hospital was run as a Department of Government -and could not therefore be said to be an industry. Again, with regard to *Tuberculosis* hospital it was found not to be an independent institution but a part of the *Tuberculosis Association of India*. The hospital was wholly charitable and was a research institute. The dominant purpose of the hospital was research and training, but as research and

training could not be given without beds in a hospital, the hospital was run. According to this Court, treatment is thus a part of research and training. In these circumstances the Tuberculosis hospital could not be described as an industry. With regard to the Kurji Holy Family Hospital again it was found to be entirely charitable. It carried on the work of training, research and treatment; its income was mostly from donations and distribution of surplus as profit is prohibited. It could not therefore be an industry as laid down in the Act. Reference may also be made to the case of Lalit Hari Ayurvedic College Pharmacy v. Its Workers' Union (1). In this the appellate Tribunal found that the pharmacy run by the appellant sold medicines in the market and realised about Rs. one lakh per annum whereas in the hospital run by it about 30% of the medicines manufactured by it were consumed and about 70% were sold in the market. This judgment was delivered on the same date by the same Bench which decided the Hospital Mazdoor Sabha case (supra). On the facts found this Court held that there could be no doubt "that the activity of the appellant in running the pharmacy and the hospital was an undertaking under s.2(j) and was an industry".

The only case of Panjrapole which appears to have come before the High Courts was that of the Madras Panjrapole v. Labour Court(2) which was the subject-matter of an industrial dispute referred to in the year 1958 by the State Government for adjudication by the Labour Court, Madras. This was decided after the Hospital Mazdoor, Sabha case. The facts referred to by the High Court were that the Madras Panjrapole was a charitable society (1) A.I.R. 1960] S.C. 1261.

(2) [1960] 2 L.L.J. 686..

registered under the Societies Registration Act occupying an area of about Ac. 12-00 of land within the city of Madras on which the munificence of several donors had enabled the construction of shelters for animals as well as sanctuary for birds. The objects of the society, as stated in the memorandum of association, are protection, care and treatment of old, infirm and injured cows, calves, bullocks etc. and affording freedom to such animals from being slaughtered unnecessarily and to guarantee old-age relief to the old, infirm and unserviceable animals till they die of natural causes. To achieve these objects, the means envisaged to be adopted were :

(a) maintenance of shelter-house for aged and unserviceable animals'

(b) the feeding and treatment of all animals entrusted to the care of the society either by the owners anxious to pension their old animals or rescued by philanthropic persons from the hands of butchers and the protection of animals remanded by magistrates;

(c) the breeding of bulls under ideal and sanitary conditions

(d) the maintenance of a dairy farm with special attention being paid to proper feeding, accommodation and water supply, the proceeds of which will go to the benefit of the other animals of the Panjrapole; and

(e) the bringing up of the calves of the young cows under healthy conditions.

The Court observed (see p. 689):

" It is a matter of common knowledge that a number of dry cows in the City of Madras are sold away to butchers by the poor milkmen who could not support them. Butchers themselves offer tempting prices for such cows, a temptation which the poverty of the milkmen could not but lead him to succumb. Dry cows were admitted into the Panjrapole to prevent them from going into the slaughter house. Maintenance of the dry cows called for stud bulls Stud bulls were presented to the society by -the Government. In the course of time, the dry cows brought forth their progeny and began to yield milk.

The Panjrapole was, therefore, in a position to sell milk yielded by the cows which were received by it with a view to protect them from the slaughter-house details of the sale amounts in respect of the milk produced shows that the institution had been receiving substantial sums every year by sale of milk."

So far as the activities of the Madras Panjrapole and Bombay Panjrapole are concerned they are Practically identical except that in the present case the maintenance, of a dairy farm is not explicitly referred to anywhere but the facts as culled from the evidence makes the same only too obvious. There was however a certain difference in the case of the Madras Panjra-pole inasmuch as the Madras High Court found that (see p. 691) "During certain years, it even went a step further. The Panjrapole purchased cows, maintained a dairy farm and supplemented their own production of milk with out side milk and sold them. These activities would certainly partake the character of a business, though the profit of such business might have gone to the humanitarian activities undertaken by the society. But the activities have long ago ceased. What the society is now having is the

-milk yielded by its own cows. Those cows are admittedly kept by the Panirapole till their lives. They are not sold.They are the property of the Panjrapole. The milk yielded by those cows could only be considered as an incidental product in the maintenance of the cows. The sale of cowdung cakes and menure and of the calves after the mother cows become dry are also incidental. It cannot be held that a trade or business is conducted by the institution."

According to the learned single Judge who heard the peti- tion the activities of the Panjrapole had nothing to do with human needs. They were solely devoted to the needs of helpless animals; though incidentally such activities have a business tinge about them it cannot be said to be for human need or material welfare. The objects were mainly religious and humanitarian. Following the test laid down in the Hospital Mazdoor Sabha case the learned Judge was of opinion that there was no industrial dispute which could be referred by the State Government to the Labour court for adjudication. The case went in appeal to a Letters Patent Bench : Workmen Employed in Madras Panjrapole v. Madras Panjrapole (1). The Bench took a somewhat different view from that of the learned single Judge. It demurred to the observations of the trial Judge that "there is no element of trade or business involved in the various activities of the society". According to the Bench :

"These observations, however, do not extend to subsequent developments, the result of the growth of the institution, and its attempt to achieve self-sufficiency. There were (1) purchase and sale of milk, a fairly wide upon scale, (2) the maintenance of a dairy farm during a period of the history of the institution, and (3) similarly, the maintenance of stud bulls, to enable dry cows to conceive and bear calves."

The Bench felt compelled to allow the appeal to the extent of modifying the writ of certiorari and laying down that the actual decision would have to be arrived at after the record of adequate evidence by the Labour court in the light of the principles formulated, the available evidence being both inadequate and contradictory. For the guidance of the Labour court the Bench observed Even if the institution at the inception, and as basically defined, be purely humanitarian,. non-industrial and not amenable to any of the tests. upon which the definition has been applied,, it cannot be gainsaid that, if the. institution had largely altered its complexion through the years, so as to have become a focus of economic production, the definition again might be applicable."

The Bench also examined the question whether the activity of the Panjrapole was in essence religious, or spiritual, as according to it a temple or a church could not be considered to be an industry.

(1) [1962]2 L.L.J. 472.

The net result of the above seems to be that although the Bench was inclined to hold that the Madras Panjrapole at its inception was not an industry the complexion of its activities might have been altered by later developments so, as to render the institution as then organised an industry within the meaning of, the Act. Further according to the Bench individual units of the Organization (like the dis- trict dairy farm) might constitute an industry though the society itself may not be one.

The matter came up again before the Madras High Court (see 1967-2 L.L.J. 399)., The Tribunal held in favour of the workmen and the learned Judge dismissed the application for the issue of a writ by the Panjrapole. The learned Judge referred to the reports of the institution in several years past from 1937 to 1957. He found that the object of the society had been amended in 1937 to enable it to receive young cows and charge fees from the owners. The idea of starting a dairy farm was for supporting the infirm cows, bullocks and horses and in pursuance of that idea stud bulls were acquired for improving the cattle breeding., The income from the sale of milk rose phenomenally reaching the figure of Rs. 60,000 in the year 1957. The learned Judge found himself unable to hold that maintaining cows and stud bulls and selling milk were only Subsidiary in nature to the humane the society, namely, to provide Shelter for the de- CrePit and useless and infirm animals. The learned Judge held that "if the Madras Panjrapole had confined itself to the objectives at its inception, namely, to give -protection to the old, infirm and decrepit animals, it could well be

-con-tended that it was only for the purpose of satisfying purely spiritual needs, as it is common knowledge- that Hindus 'consider cow protection. as one of their religious duties. If -the Madras Panjrapole had not extended its activities, following 'the, authorities - cited above, would have had no hesitation in holding that it is not an industr) -A reading of the annual reports show that a large

number of high milk yielding cows and buffaloes were purchased, by the society and due to the successful working

-of the dairy farm the Panjrapole was able to supply milk to various institutions The reports show that considerable profits were made by the Panjrapole, the sale of milk fetching a sum of Rs. 60,000 in the year 1957". In the result the petition was dismissed and the labour court was directed to determine the other issues.

We have referred at some length to the Madras Panjle case to show the analogy of the activities of the radoras Panjrapole to the. Bombay Panjrapole. Save for the fact that the Madras Panjrapole definitely and expressly changed its objective by starting a dairy farm and purchasing mulch cows and stud bulls there is very little difference between the facts of the case before us from those in the Madras Panjrapole case. In the present case only one stud bull was purchased but the activities pursued by the Bombay Panjrapole make it clear that they were pursuing the same kind of activity, namely, that of using stud bulls for the purpose of breeding healthy cattle including cows so as to be able to make a very sizable income from the sale of milk. For the last few years, from 1958 to 1962 the number of milch cows was always considerable which could only be accounted for by the fact that from time to time the place of cows which had become dry was being taken up by cows fecundate by the bulls maintained for the purpose of keeping up a steady supply of milk. We have already referred to the fact that the value of milk supplied to the sick and infirm cattle was infinitesimal compared to that sold in the market. The expenses incurred in connection with the treatment of sick and infirm animals was also negligible compared to the total expenses of the institution. The number of men employed for such treatment was very small at all times. The mere fact therefore that the Panjra pole never purchased milch cows and never purchased stud bulls except once makes no difference to the question as to whether their activity of maintaining cows and bulls could only be considered as an investment. It was certainly carried on as a business although it was not pursued in the same way as astute businessmen only out to make profit would, namely, get rid of the animals which were no longer fit for any use. The value of the milk supplied for the last 3 or 4 years was well in excess of Rs. 2 lakhs per annum and this could only be possible if the cows and buffaloes had been kept and maintained not merely to keep them alive but with the idea of getting as much production out of them as possible.

In this view of the matter, it is hardly necessary to consider the other cases which were cited at the Bar, namely, Gymkhana Club Union case (1), Cricket Club v. Labour Union (2) and Harinagar Cane Farm v. State of Bihar (1). It was remarked in the Gymkhana Club case that the activity of the club is conducted with the aid of employees, who follow callings or avocations and that the activities of the club was not a calling or business of its members, of Managing Committee and there was no undertaking analogous to trade or business. In the Cricket Club's case (2) the Court examined the different activities of the club and came to the conclusion that they did not lead to the inference that the club was carrying on an industry.

On the facts of this case we hold that the activities of the Panjrapole as disclosed in this case constituted an industry within the meaning of section 2(j) of the Industrial Disputes Act and the appeal must therefore be dismissed with costs.

S.C. Appeal dismissed..

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

(2) [1969] 1 S.C.R. 600..

(3) [1964] 2 S.C.R. 458.

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