Supreme Court of India
University Of Delhi & Anr vs Ram Nath on 1 April, 1963
Equivalent citations: 1963 AIR 1873, 1964 SCR (2) 703
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B.

PETITIONER:
UNIVERSITY OF DELHI & ANR.

Vs.

RESPONDENT:
RAM NATH

DATE OF JUDGMENT:
01/04/1963

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1963 AIR 1873 1964 SCR (2) 703
CITATOR INFO :

E	1968 SC 554	(16,21)
E	1970 SC1407	(1)
R	1972 SC 763	(12)
F	1976 SC 145	(9)
O	1978 SC 548	(79,112,117,124,159,161)
RF	1988 SC1182	(6)
R	1988 SC1700	(5)

ACT:
Industrial Dispute-Bus drivers in employ of university-Whether "workers"-Education institution, if an industry'-Industrial Disputes Act, 1947 (14 of 1947), ss. 2 (g), 2 (j) 2 (s), 33c (2).

HEADNOTE:
Appellant No. 1, the University of Delhi and Appellant No. 2 Miranda House, a college affiliated to the University, are institutions for education, the predominant activities of these being the imparting of education. At the material time respondent No. 1 was employed as bus driver under appellant No. 2. Both the respondents were discharged from service by giving separate notices and on payment of one month's salary each in lieu of notice. The respondents by

separate petitions applied before the industrial Tribunal for the award of retrenchment benefits. The appellants resisted the petitions on the preliminary ground that they did not constitute an "industry" under S. 2 (j) of the Industrial Disputes Act, 1947, and that they were not "employees" under s. 2 (g) of the said Act and therefore the application made by the respondents under S. 33 (c) (2) of the Act were incompetent. The Tribunal rejected this contention and after considering the merits passed an order in favour of the respondents directing the appellants to pay Rs. 1050/- to each one of respondents as retrenchment compensation.

The appellants appealed to this Court with special leave. They contended in the appeal that the Tribunal was in error in giving the definition of the word "industry" under s. 2 (j) its widest denotation by adopting a mechanical and literal rule of construction and it was urged that the policy of the Act clearly is to leave educational Institutions out of the purview of the Act. The respondents' contention was that s. 2 (j) had defined the word "industry" in words of widest amplitude and there is no justification for putting any artificial restraint on the meaning of the said word as defined.

704

Held that having regard to the fact that the work of education is primarily and exclusively carried on with the assistance of the labour and co-operation of teachers, the non-inclusion of the whole class of teachers from the definition prescribed by 3. 2 (s) has an important bearing and significance in relation to the problem under consideration. It could not have been the policy of the Act that education should be treated as industry for the benefit of a very minor and insignificant number of persons who may be employed by educational institutions to carry on the duties of the subordinate staff. Reading s. 2(g), (j) and (s) together it is reasonable to hold that the work of education carried on by an educational institution like the University of Delhi is not an industry within the meaning of the Act.

In the main scheme of imparting education, the subordinate staff with function like those of the respondents play such a minor, subsidiary and insignificant part that it would not be reasonable to allow the work of this subordinate staff to lend its industrial colour to the principal activity of the University which is imparting education. From a rational point of view it would be regarded as inappropriate to describe education even as a profession. Education in its true aspect is more of a mission and a vocation rather than a profession or trade or business, however wide may be the denotation of the two latter words under the Act.

The appellants cannot be regarded as carrying on an industry under s. 2 (j) and so the -application made by the respondents against them under s. 33c (2) of the Act are

held to be incompetent.
State of Bombay v. The Hospital Mazdoor Sabha [1960) 2 S. C. R. 866, Lalit Hari Ayurvedic College Pharmacy Pilibhit. v. Lalit Hari Ayurvedic College Pharmacy Workers Union, Pilibhit, A. I. R. 1960 S. C. 1261, The Ahmedabad Textile Industry a Research Association v. The State of Bombay , [1961] 2 S. C. R . 481, The Federated State School Teachers' Association of Australia v. State of Victoria' [1929] 41 _C. L. R. 569 and The Corporation of the, City of Nagpur v. Its Employees, [1960] 2 S. C. R. 942, Case-law reviewed.

JUDGMENT:

CIVIL APPFLLATE JURISDICTION : Civil Appeals Nos. 650 and 651 of 1962.

Appeals by special leave from the order dated September 22, 1961 of the Labour Court, Delhi, in L C. A No. 479 of 1961.

M.C. Setalpad, K. K. Raizada. B. K. Jain -and A. G. Ratnaparkhi, for the appellants.

Janardan Sharma, for the respondents.

S. P. Verma, for Intervener No. 1.

T. R. Bhasin, S. C. Malik Sushma Malik and Bhejalal Malik, for intervener No. 2.

1963. April 1. The judgment of the Court was delivered by GAJENDRAGADKAR J.-These two appeals by special leave arise out of two petitions filed against the University of Delhi and Principal, Miranda House, University College for Women, appellants 1 and 2, by two of their employees Ram Nath and Asgar Masih, respondents 1 & 2 respectively, under section 33C (2) of the Industrial Disputes Act, 1947 (14 of 1947) (hereinafter called 'the -Act'). Appellant No. 2 which is the University College for women is run by appellant No. 1, and so, in substance, the claim made by the two employees was mainly against appellant No. 1. Ram Nath's case was that he had been employed as driver by appellant No. 2 in October, 1949 and was served with a notice on May 1, 1961, that since his services were no longer required, he would be discharged from his employment on payment of one month's salary in lieu of notice. Asgar Masih made substantially similar allegations. He bad been employed in the first instance, by appellant No. 1 as driver but was then transferred to appellant No. 2 on October 1, 1949. His services were similarly terminated by notice on May 1, 1961 on payment of one month's salary in advance in lieu of notice. It is common ground that appellant No. 1 found that running the buses for the convenience of the girl students attending the college run by appellant No. 2 resulted in loss, and so, it was decided to discontinue that amenity. Inevitably, the services of the two drivers had to be retrenched, and so, there is no dispute that the retrenchment is genuine and there is no element of mala fides or unfair labour practice involved in it. It is also common ground that if the employees are workmen within the meaning of the Act, and the work carried on by the appellants is an industry under s. 2(j), section 25F has not been complied

with and retrenchment amount payable under it has not been paid to the respondents. The petitions made by the respondents were resisted by appellant No. 1 on the preliminary ground that appellant No. 1 was not an employer under s. 2(g), that the work carried on by it was not an industry under s. 2(j), and so, the applications made under section 33C(2) were incompetent. The Tribunal has rejected this preliminary objection and having considered the merits, has passed an order in favour of the respondents directing the appellants to pay Rs. 10,50/- to each one of the respondents as retrenchment compensation. It is the validity of this award that is challenged before us by the appellants, and the only ground on which the challenge is made is that the work carried on by appellant No. 1 is, not an industry under s.2(j).

Though the question thus raised by these two appeals lies within a narrow compass, its importance is very great. If it is held that the work of imparting education conducted by educational institutions like the University of Delhi is an industry under s. 2(j), all the educational institutions in the country may be brought within the purview of the Act and disputes arising between them and their employees would be industrial disputes which can be referred for adjudication under section 10 (1) of the Act and in appropriate cases, applications can be made by the employees under s. 33C(2). The appellants contend that the Tribunal was in error in giving the definition of the word 'industry' under s. 2 (j) its widest denotation by adopting a mechanical and literal rule of construction and it is urged that.the policy of the Act clearly is to leave education and educational. institutions out of the purview of the Act.

On the other hand, the respondents contend that s. 2(j) has defined the word 'industry' deliberately in words of widest amplitude and there is no justification for putting any artificial restrain on the meaning of the I said word as defined. In support of this argument, reliance is placed or the decision of this court in the State of Bombay v. The Hospital Mazdoor Sabha (1). In that case, this Court observed that "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 causal nor must it be for oneself, nor for pleasures." The argument is that the concept of 'service' which is expressly included in the definition of 'industry' need not -be confined to material service and ought to be held to include even educa- tional or cultural service, and in that sense educational work carried on by the University of Delhi held to be an industry.

Having regard to the fact that the word -,industry' as defined in the Act takes within its sweep any calling or service or employment, it cannot be denied that there is prima facie some force in the argument urged by the respondents, but in testing the validity of this argument, it will immediately become necessary to enquire whether the work (1)[1960] 2 S. C. R. 866, 879.

carried on by an educational institution can be said to be work carried on by it with the assistance of labour or co- operation of teachers. The main function of educational institutions is to impart education to students and if it is held that the impartings education' is industry in reference to which

the educational institution is the employer, it must follow that the teachers who co-operate with the institution and assist it with their labour in imparting education are the employees of the institution, and so, normally, one would expect that the teachers would be employees who would be entitled to the benefits of the Act. The co-operation of the employer and the employees, or, in other words, the co-operation between capital and labour to which reference is always made by industrial adjudication must, on the respondents' contention, find its parallel in the co-operation between the educational institution and its teachers. It would, DO doubt, sound somewhat strange that education should be described as industry and the teachers as workmen within the meaning of the Act, but if the literal construction for which the respondents contend is accepted, that consequence must follow. If the scheme of the Act and the other relevant considerations necessarily lead to the said consequence, the Court will have to accept the respondents' contention notwithstanding the fact that it does not fit in with the generally accepted sense of the word industry'.

Does the concept of co-operation between teachers and their institution being treated as similar to the co-opration between labour and capital fit in with the scheme of the Act ? That is inevitably the next question which we must consider and in doing so, three definitions will have to be borne in mind. Section 2 (g) (i) defines an 'employer' as meaning in relation to an industry carried on by or - under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department; and S. 2(g)(ii) provides that an employer means in relation to an industry carried on by or on behalf of a local authority,, the chief executive officer of that authority. If the work of imparting education is an industry., the University of Delhi may have to be regarded as an employer within the meaning of s. 2 (g). Section 2

(j) defines an 'industry' as meaning any business, trade, undertaking, manufacture or calling of employers and includes 'any calling,service, employment, handicraft, or industrial occupation or avocation 'of workmen. It is un- necessary to comment on this definition, because the precise scope of this definition is the very subject matter of the dispute which we are, considering. 'That takes us to the definition of "workman" prescribed by s. 2 (s). A workman under the said definition means., inter alia, any person, including an apprentice, employed in any industry to do any skilled or unskilled manual, supervisory,, technical or clerical work for hire or reward. It is common ground that' teachers employed by educational institutions, whether the said institutions are imparting primary., secondary, collegiate or postgraduate education, are not workmen under s. 2(s), and so, it follows that the whole body of employees with whose co-operation the work of imparting education is carried on by educational institutions do not fall within the purview of s. 2(s), and any disputes between them and the -institutions which employed them are outside the scope of the Act. In other words, if imparting education is an industry under s. 2(j), the bulk of the employees being outside the purview of the Act, the only disputes which can fall within the scope of the Act are those which arise between such institutions and their subordinate staff, the members of which may fall under s. 2(s). In our opinion, having regard to the fact that the work of education is primarily and exclusively carried on with the assistance of the labour and co-operation of' teachers, the omission of the whole class of teachers from the definition prescribed by s. 2(s) has an important bearing and significance in relation to the problem which we are considering. It could not have been the policy of the Act that education should be treated as industry for the benefit of a very minor and insignificant number of

persons who may be employed by educational institutions to carry on the duties of the subordinate staff. Reading ss. 2(g), (j) and

(s) together, we are inclined to hold that the work of education carried on by educational institutions like the University of Delhi is not an industry within the meaning of the Act.

Having reached this conclusion, it may be legitimate to observe that it is not surprising that the Act should have excluded education from its scope, because the distinctive purpose and object of education would make it very difficult to assimilate it to the position of any trade, business or calling or service within the meaning of s. 2(j). Education seeks to build up the personality of the pupil by assisting his physical, intellectual, moral and emotional development. To speak of this educational process in terms of industry sounds so completely incongruous that one is not surprised that the Act has deliberately so defined workman under s. 2(s) as to exclude teachers from its scope. Under the sense of values recognised both by the traditional and con- servative as well as the modern and progressive social outlook, teaching and teachers are, no doubt, assigned a high place of honour and it is obviously necessary and desirable that teaching and teachers should receive the respect that is due to them. -A proper sense of values would naturally hold teaching and teachers in high esteem, though power or wealth may not be associated with them. It cannot be denied that the concept of social justice is wide enough to include teaching and teachers, and the requirement that teachers should receive proper emoluments and other amenities which is essentially based on social justice cannot be disputed; but the effect of excluding teachers from s. 2(s) is only this that the remedy available for the betterment of their financial prospects does not fall under the Act. It is well known that Education Departments of the State Governments as well as the Union Government, and the UniversitY Grants Commission carefully consider this problem .and assist the teachers by requiring the payment to them of proper scales of pay and by insisting on the fixation of other reasonable terms and conditions of service in regard to teachers engaged in primary and secondary education and collegiate education which fall under their respective jurisdictions. The position nevertheless is clear that any problems connected with teachers and their salaries are outside the purview of the Act, and since the teachers from the sole class of employees with whose co-operation education is imparted by educational institutions, their exclusion from the purview of the Act necessarily corroborates the conclusion that education itself is not without its scope. In this connection, it would be material to examine the composition of the University of Delhi. This University has been established and incorporated as a teaching and affiliating University under the Delhi University Act, 1922 (No. 8 of 1922). The Organization of this University consists of the Officers of the University, such as the Chancellor, the ProChancellor, the Vice-Chancellor, the Treasurer, the Registrar, the Deans of Faculties and others, and its authorities, such as the Court, the executive Council, the Academic Council, the Finance Committee, the Faculties and others vide sections 8 and 17. These authorities are composed of the teachers in the University who are classified as Professors, Readers and Lecturers and other persons interested in education. In other words., it is the officers of the University and its respective authorities that constitute the Organization of the University of Delhi. It is well known that this Organization does not contribute capital of itself in carrying out its work of imparting higher education. It receives grants from the Central Government, from the University Grants Commission and from charitable donors and charitable institutions. It also receives some income from tuition fees. But then it seems very difficult to postulate thatin the work of imparting

education, the Universityof Delhi contributes any capital as such. This workis carried on by the University with the co-operation of all its teachers and it would sound inappropriate to hold that this work is in the nature of a trade or business, or it amounts to rendering of service which can be treated as an industry under the Act. What we have said about the University of Delhi, would be equally true about all educational institutions which are founded primarily for the purpose of imparting education.

It is true that like all educational institutions the University of Delhi employs subordinate staff and this subordinate staff does the work assigned to it; but in the main scheme of imparting education, this subordinate staff plays such a minor, subsidiary and insignificant part that it would be unreasonable to allow this work to lend its industrial colour to the principal activity of the University which is imparting education. The work of promoting education is carried on by the University and its teachers and if the teachers are excluded from the purview of the Act, it would be unreasonable to regard the work of imparting education as industry only because its minor, subsidiary and incidental work may seem to partake of the character of service which may fall under s . 2(j).

It is well known that the University of Delhi and most other educational institutions are not formed or conducted for making profit; no doubt, the absence of profit motive would not take the work of any institution outside s. 2 (j) if the requirements of the said definition are otherwise satisfied. We have referred to the absence of profit motive only to emphasis the fact that the work undertaken by such educational institutions differs from the normal concept of trade. or business. Indeed, from a rational point of view, it would be regarded as inappropriate to describe education even as a profession. Education in its true aspect is more a mission and a vocation rather than a profession or trade or business, however wide may be the denotation of the two latter words under the Act. That is why we think it would be unreasonable to hold that educational institutions are employers within the meaning of s. 2 (g), or that the work of teaching carried on by them is an industry under s. 2(j), because, essentially, the creation of a well-educated, healthy young generation imbued with a rational progressive outlook on life which is the sole aim of education, cannot at all be compared or assimilated with what may be described as an industrial process. Therefore, we are satisfied that the University of Delhi and the Miranda College for Women run by it cannot be regarded as carrying on an industry under s. 2(j), and so, the applications made by the respondents against them under s. 33 C(2) of the Act must be held to be incompetent.

It still remains to consider some of the decisions which have been cited at the Bar before us in these appeals. The first decision to which reference must be made is the case of the Hospital Mazdoor Sabha (1). In that case, this Court considered somewhat elaborately the implications of the definition prescribed by s. 2 (j), but it was expressly stated that the Court was not then expressing any opinion (1) L1960] 2 S. C. R. 866, 879.

on the question as to whether running an educational institution would be an industry under the Act. A similar statement was made in the case of Lalit Hari Ayurvedic College Pharmacy Pilibhit v. Lalit Hari Ayurvedic College Pharmacy Workers Union, Pilibhit (,). Having held that on the broad facts proved in -that case, there was no doubt that the activity of the appellant was an undertaking

under s. 2(j), the Court proceeded to add that it was not called upon to decide whether running an educational institution would be an industry under the Act.

In the Ahmedabad Textile Industry's Research Association v. The State of Bombay (2), while discussing the question as to the character of the work undertaken by the Research Association, this Court took the precaution of observing that the activities of the Association had little in common with the activities of what may be called a purely educational institution. It would thus be noticed that in holding that the Research Association was carrying on an industry, this Court emphasized the fact that its work was distinct. and separate from the work of an institution which carries on purely educational activities. The question thus left open has been raised by the present appeals for our decision.

It is, however, argued by the respondents that in the Hospital Mazdoor Sabha case (3), this Court in terms, has approved of the minority judgment of Isaacs j. in The Federated State School Teachers' Association of Australia v. The State of Victoria (4), and since Isaacs J. held that the dispute raised by the teachers in that case amounted to an industrial dispute, it would follow that this Court by implication, has expressed its concurrence with the conclusion of Isaacsj. This argument is not (1) A.I.R. 1960 S.C. 1261.

(3) [1960] 2 S.C.R. 866,879.

(2) [1961] 2 S.C.R. 48 1.

(4) (1929) 41 C. L.R. 569.

well founded. It is true that in the Hospital Mazdoor Sabha case (1), this Court expressed its general approval with the social philosophy to which Isaacs J. gave expression in his dissenting judgment in dealing with the scope and effect of the definition prescribed by s. 2 (j) in our Act ; but it deliberately took the precaution of making a specific statement that though the general views expressed by Isaacs J. appeared to the Court to be acceptable, the Court should not be understood as having concurred in his final conclusion in, regard to the character of educational activities carried on by educational institutions. The observation made in the judgment leaving open that question was not a casual or an accidental observation ; it was made deliberately to avoid a possible argument in future that the said judgment impliedly accepted the conclusion of Isaacs J. Therefore, the approval given to the general views expressed by Isaacs, J. in that case does not necessarily mean that his final conclusion was accepted.

Let us then briefly notice the effect of the decision of the Australian High Court in the case of the Federated State School Teachers' Association of Australia (2). The dispute in that case was in regard to the wages and conditions of service and it had been raised by teachers employed by the States in their various schemes of national education and a point which arose for decision was whether the educational activities of the States carried on under the appropriate statutes and statutory regulations of each State relating to education constituted an industry within the meaning of section 4 of the Commonwealth Conciliation and Arbitration Act, 1904-28. The majority decision was that

the occupation of the teachers so employed was not an " industrial" occupation, and that the dispute which existed between the States and the teachers employed by them was, therefore, not an "industrial dispute"

(1) E1960J 2 S.C.R. 866, 879.

(2) [1929] 41 C.L.R. 569.

within section 51 of the Constitution. According to the majority decision, "If the carrying on a system. of public education is not within the sphere of industrialism, those who confine their efforts to that activity cannot be engaged in an industry or in an industrial occupation or pursuit." (pp. 575-576). The argument that if the said activity was carried on by a private person, it would be described as a business, trade or industry, was repelled with the answer that "'a private person could no more carry on this system of public education that he could carry on His Majesty's Treasury or any of the other executive departments of Government; and if he were authorized to do So, which was almost inconceivable, then he would no more carry on an industry than the State does now." (p. 575). Rich J., who concurred with the majority opinion, observed that "teaching does not, like banking and insurance, play a part in the scheme of national industrial activity" (p. 591) and he rejected the view expressed by Isaacs, J., that education played a direct part in the promotion of industry, because he thought that an industrial system could exist without national education. "The existence of human beings," observed the learned judge, --'is no doubt necessary but it is absurd' to suggest that everything that goes to make the man forms a part of the community industrially organised with a view to the production and distribution of wealth." (p. 592). Isaacs, J., however, struck a strong note of dissent. With the general observations made by Isaacs, J., in regard to the scope of industrial disputes this Court has already expressed its concurrence., but, with respect, it is not easy to accept the theory of the learned judge that education provided by the State in that case constituted in itself an independent industrial operation as a service rendered to the community (p. 588). Similar comment falls to be made in regard to another observation of the learned judge that there is at least as much reason for including the educational establishments in the constitutional power as labour services, as there is to include insurance companies as capital services. The learned Judge thought that "in that compound process, two facts emerge with respect to education. One is that industrial education is less and less left to apprenticeship systems and the other is that the efficiency of the worker is generally directly affected by his education." (pp. 588 & 589). We are inclined to think that the comment made by Rich, J., on this _reasoning of Isaacs, J., is not without force.

There is, besides, another point which has to be borne in mind in appreciating the effect of this Australian decision. Under the Commonwealth Conciliation and Arbitration Act, 1904-34, the definition of the word "'employee" is wider than that of the definition of the word "'workman" under s. 2 (s) of our Act. The "employee' under the Australian Act means any employee in any industry and includes any person whose usual occupation is that of employee in any industry. It would appear that teachers would fall under the definition . of employees' and so, the definitions of the words "industry", "industrial disputes" and "industrial matters" would naturally be wide enough to take in the cases of disputes raised by teachers in regard to industrial matters, such as wages, hours relating

to work, retrenchment and others. Thus, it is clear that the main difficulty which arises from the definition of workman prescribed by s. 2(s) in our Act did not arise under the definition of employee in the Australian Act, and that is undoubtedly one important point of distinction. Therefore, we do not think that much assistance can be drawn from the minority decision of Isaacs, J., in answering the problem which the appellants have raised before us in the present appeals.. The respondents, however, contend that there is a recent decision of this Court which supports the view taken by the Tribunal that the work carried on by the appellants amounts to an industry under s. 2(j). In The Corporation of the City of Nagpur V. Its Employees, (1) the question which arose for the decision of this Court was whether and to what extent the municipal activities of the Corporation of Nagpur City fell within the term "industry" as defined by s. 2(14) of the C.P. and Berar Industrial Disputes Settlement Act, 1947. It appears that disputes has arisen between the Corporation and its employees in various departments and in an adjudication by the State Industrial Court it was held that the Corporation and all its departments were covered by the definition of "industry" prescribed by s.2(14). The award thus passed by the State Industrial Court was challenged by the Corporation before the High Court by a writ petition under Art. 226 of the Constitution. The High Court rejected the Corporation's plea that its activities did not constitute an-industry-, but remanded the case to the Industrial Court for determining which of the departments of the Corporation fell within the definition. After remand, the Industrial Court found all the departments of the Corporation to constitute an industry, except five. Against the said award, the Corporation came to this Court by special leave. No appeal was, however, preferred by the employees in respect of the five departments which were excluded from s.2(14) by the award. The appeal preferred by the Corporation failed and this Court added that the finding of the Industrial Court excluding five departments from the definition under s.2(14) need not be examined, since it had not been challenged by the employees. That, in substance, is the decision of this Court.

It would be noticed that the main argument which was urged on behalf of the Corporation was that its activities were regal or governmental in Character, and so, it was entirely outside the purview of the (1) [1960] 2 S.C.R. 942.

Berar Act. This argument was carefully examined. It was conceded that the regal functions described as primary and inalienable functions of the State are outside the purview of the Berar Act and if they are delegated to a Corporation, they would be excluded from s. 2 (14), but the Court held that these, regal functions must be confined to legislative power, administration of law and judicial power. That is how the broad and main argument urged by the Corporation was rejected. Dealing with the work carried on by the several departments of the Corporation, this Court observed that if a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation, and it held that if a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be-the criterion for the purposes of the Act. Amongst the departments which were then examined was the education department under which the corporation looked after the primary education of the citizens within its limits. In connection with this department, it was observed that the service rendered by the department could be done by private persons, and so, the subordinate menial employees of the department came under the definition of employees and would be entitled to the benefits of the Act.

Reading the judgment as a whole there can be no doubt that the question as to whether educational work carried on by educational institutions like the University of Delhi which have been formed primarily and solely for the purpose of imparting education amounts to an industry within the meaning of s.2 (14), was not argued before the Court and was not really raised in that form. The main attack against the award proceeded on the basis that what the Corporation was doing through its several departments was work which could be regarded as regal or governmental, and as such, was outside the purview of the Act, and that argument was rejected. The other point which is also relevant is that one of the tests laid down by this Court was that if a department was carrying on predominantly industrial activities, the fact that some of its activities may not be industrial did not matter. Applying the same test to the Corporation as a whole, the question was examined and the inclusion of the education department in the award was upheld. It would thus be clear that if the test of the character of the predominant activity of the institution which was applied to the Corporation is applied to the University of Delhi, the answer would be plainly against the respondents. The predominant activity of the University of Delhi is outside the Act, because teaching and teachers connected with it do not come within its purview, and so, the minor and incidental activity carried on by the subordinate staff which may fall within the purview of the Act cannot alter the predominant character of the institution.

It would be recalled that in the case of the Hospital Mazdoor Sabha (1), the question about educational institutions was deliberately and expressly left open, and if the said question was intended to be decided in the case of the Corporation of the City of Nagpur (2), naturally more specific arguments would have been urged and the problem would have been examined in all its aspects. Incidentally, we may add that the Bench that left the question open in the case of Hospital Mazdoor Sabha (1) was the same Bench which heard the case of the Corporation of the City of Nagpur and the two matters were argued soon after each other, though the judgment in the first case was delivered on January 29, 1960, and that in the latter case on (1) [1960] 2 S.C.R. 866, 879.

(2) [1960] 2 S.C. R. 942.

February 10, 1960. We are making these observations with a view to emphasize the fact that the question which has been raised for our decision in the present appeals was not raised, nor argued, in the case of the Corporation of the City of Nagpur and cannot, therefore, be said to have been decided even incidentally only by reason of the fact that amongst the departments which were held to have been pro- perly included in the award was the education department of the Corporation. If we had been satisfied that the said judgment had. decided this point, we would either have followed the said decision, or would have referred the question to a larger Bench.

In the result, the appeals are allowed,, the orders passed by the Industrial Tribunal arc set aside and the petitions filed by the respondents under s. 33 C (2) of the Act are dismissed. There would be no order as to costs. Appeals allowed.