what we find in trade or business. This takes into the fold 'industry' undertakings, callings and services, adventures "analogous to the carrying on the trade or business." all features other than the methodology of carrying on the activity viz. In organising the cooperation between employer and employee, may be dissimilar, if on the employment terms there is analogy.

Iii. Applications of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) the consequences are: (1) professions, (2) clubs, (3) educational institutions, (4) co-operatives, (5) research institutes, (6) charitable projects and (7) other kindred adventures, if they fulfil the triple tests listed in i *(supra)* cannot be exempted from the scope of section 2(j),

(b) a restricted category of professions, clubs, co-operatives and even *gurukulas* and little research clubs may qualify for the exemption if the simple ventures, substantively, and going by the dominant nature criterion, substantially, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) if, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers, volunteering to run a free legal service clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then the institution is not an industry even if stray servants, manual or technical, are hired. Such elementary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project.

4. *The dominant nature test:*

(a) where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not "workmen" as in the *university of delhi* or some departments are not productive of goods and services is isolated, even then the predominant nature of the services and the integrated nature of the departments as explained in the *corporation of nagpur* will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, they can be considered to come within s. 2(j).

(d) constitutional and competently enacted legislative provisions may remove from the scope of the act categories which otherwise may be covered thereby.

5. We overrule *safdarjung* , *solicitors' case* , *gymkhana delhi university* , *dhanrajgiri hospital* and other rulings whose ratio runs counter to the principles enunciated above, and *hospital mazdoor sabha* is hereby rehabilitated."

Thus in *banglore water supply and sewer age board*y *rajappa,* the supreme court laid down the following test which is practically reiteration of the test laid down in *hospital mazdoor sabha* case:

Triple test. Where there is a (1) systematic activity; (2) organised by cooperation, between employer and employee and (3) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes, *prima facie* there is an industry in the enterprise. This is known as triple test,

The following points were also emphasised in this case:

1. Industry does not include spiritual or religious services geared to celestial bliss, e.g., making on large scale *prasad* or food,

2. Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

3. The true test is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

4. If the organisation is a trade or business, it does not cease to be one because of philanthropy animating the undertaking.

5. Although s. 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to over-reach each other. The word "undertaking" must suffer a contextual and assocsational shrinkage, so also "service", "calling" and the like. The inference is that all organised activity possessing the triple elements although not trade or business may still be industry provided the employer-employee basis, bears resemblance to what we find in trade or business.

The consequences are:

(1) professions,

(2) clubs,

(3) educational institutions,

(4) co-operatives,

(5) research institutions,

(6) charitable projects, and

(7) other kindered adventures,

If they fulfil the triple test, cannot be exempted from scope of definition of industry under section 2(j) of the act.

Dominant nature test. Where a complex of activities some of which qualify for exemption, others not, involve employees on the total undertaking some of whom are not "workmen" or some departments are not productive of goods and services if isolated, even then the predominant nature of the services and the integrated nature of the departments will be the true test, the whole undertaking will be "industry" although those who are not workmen by definition may not benefit by the status.

Exceptions. A restricted category of professions, clubs, co-operatives and even *gurukulas* and little research labs, may qualify for exemption if in simple ventures, substantially and, going by the dominant nature criterion substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

If in pious or altruistic mission, many employ themselves, free or for small honorarium or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central

personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical are hired. Such elementary or like undertakings alone are exempt, not other generosity, compassion, developmental passion or project.

Sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by governmental or statutory bodies. Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within section 2(j).

In *coir board, ernakulam* verses *indira devai ps (i)* , the two-judge bench of the supreme court said:

"the definition of industry under the industrial disputes act was held to cover all professions, clubs, educational institutions, cooperatives, research institutions, charitable projects and anything else which could be looked upon as organised activity where there was a relationship of employer and employee and goods were produced or service was rendered. Even in the case of local bodies and administrative organisations the court evolved a 'predominant activity' test so that whenever the predominant activity could be covered by the wide scope of the definition as propounded by the court, the local body or the organisation would be considered as an industry. Even in those cases where the predominant activity could not be so classified, the court included in the definition all those activities of the organisation which could be so included as industry, departing from its own earlier test that one had to go by the predominant nature of the activity. In fact, chandrachud, j. (as he then was) observed that even a defence establishment or a mint or a security press could, in a given case, be considered as an industry. Very restricted exemptions were given from the all embracing scope of the definition so propounded. For example, pious or religious missions were considered exempt even if a few servants were hired to help the devotees. Where normally no employees were hired but the employment was marginal the organisation would not qualify as an industry. Sovereign functions of the state as traditionally understood would also not be classified as industry though government departments which could be served and labelled as industry would not escape the industrial disputes act.

The majority laid down the 'dominant nature test for deciding of whether the establishment is an industry or not."

Suggestion. Constitutional and competently enacted legislative provisions may well remove from the scope of industrial disputes act categories which otherwise may be covered thereby. The parliament must step in and legislate in a manner which will leave no doubt as to its intention.

However, doubting the correctness of the tests laid down in *banglore water supply & sewerage board verses rajappa* and pointing out the damaging effects of the extended meaning given to " industry" is this case, a two-judge bench of the supreme court in *coir board* verses *indira devai rs.*, observed that a larger bench should be constituted to reconsider *banglore water supply & sewerage board M. Rajappa* decision. It was further observed that since the notification bring into effect the 1982 amendment to s. 2(j) of the industrustial disputes act has not been issued by the executive so far the matter should be judicially re-examined. Hence matter referred to larger bench to reconsider the decision in that case. In *coir board*v. *Indira devai rs.,* the larger bench of the supreme court held that the *banglore water supply and sewerage board* v. *Rajappa* decision "does not require reconsideration".

Difficulty in defining "industry". The supreme court observed, "industry, therefore, cannot be strictly defined but only be described. Such a rule, however, leaves too wide a door open for speculation and subjective notions as to what is describable as an industry. It is best to look for a rough rule of guidance by considering what the concept of industry must exclude."

New **definition of "industry" but not yet given effect till date**

The definition of "industry" was amended in 1982 and is reproduced below. It shall stand substituted w.e.f. The date to be notified.

(j) "industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not—

(1) *any capital has been invested for the purpose of carrying on such activity;*

Or

(2) *such activity is carried on with a motive to make any gain or profit.* **And includes**

(a) *any activity of the dock labour board established under section 5-a of the dock workers (regulation of employment) act, 1948;*

(b) *any activity relating to the promotion of sales or business or both carried on by an establishment.* **But does not include**

(1) *any agricultural operation except where such agricultural operations' carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause and such other activity is the predominant one).*

Explanation. For the purpose of this sub-clause "agricultural operation " does not include any activity carried on in a plant at ion as defined in clause (f) of sect ion 2 the plantation labour act, 1951, or

(2) *hospital or dispensaries, or*

(3) *educational, scientific, research or training institutions; or*

(4) *institutions owned or managed by organisation wholly or substantially engaged in any charitable, social or philanthropic service; or*

(5) *khadi or village industries; or*

(6) *any activity of the government relatble to the sovereign functions of the government including all the activities carried on by the departments of the central government dealing with defence, research, atomic energy and space; or*

(7) *any domestic service; or*

(8) *any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or*

(a) *any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individual in relating to such activity is less than ten.*

It may be noted that the amendment has not yet been brought into force. The earlier definition of 'industry' still continues to be valid and effective.

This definition has incorporated the triple test laid down in *banglore water supply* case, but has excluded many activities like hospitals, educational institutions, etc.

In *des raj* v. *State of punjab,* air 1988 sc 1182, the irrigation department of the state of punjab was held to bean "industry" within the meaning of s. 2(j) of the industrial disputes act as it stands at present. The supreme court applied the tests laid in various decisions of the supreme court and particularly the dominant nature test evolved by krishna lyer, j. In **bangalore water supply and sewerage board** case. The supreme court further stated in the above case that though by s. 2(c) of the amending act 46 of 1982, the definition of industry had been amended but the amendment has not yet been brought into force even after a lapse of six years. "it is appropriate that the same should be brought in force as such or with such further alterations as may be considered necessary, and the legislative view of the matter is made known and the confusion in the field is cleared up. In the event of the definition of industry being changed either by enforcement of the new definition of industry or by any other legislative change, it would always be open to the aggrieved irrigation department to raise the issue again and the present decision would not stand in the way of such an attempt in view of the altered situation."

In *karmani properties ltd.* Verses *state of west bengal,* the appellant company owned several mansion houses. There were about 300 flats in those mansions which had been let out to tenants. The appellant provided various facilities to its tenants in these flats, e.g., free supply of electricity, washing and cleaning of floors and lavatories, lift service, electric repairs and replacing, etc. And for that purpose the company employed 50 liftman, durwans, pumpmen, electric and other mistries, bill collectors and bearers etc. In connection with those properties. A dispute arose between the employees of the company and the company with regard to wages, scales of pay. Held that the activities carried on by the company fell within the ambit of the expression "industry" defined in s. 2(j) of the industrial disputes act as constructed by the supreme court in **bangalore water supply and sewerage board** case.

In *gurmail singh* verses *state of punjab,* it was held that running of tubewells by government or government owned corporation constitutes "industry".

In *all india radio* verses *santosh kumar,* it was held that "all india radio" and "doordarshan" are covered by the definition of "industry" within the meaning of s. 2(j) of the act. The functions which are carried on by all india radio and doordarshan cannot be said to be confined to sovereign functions as they carry on commercial activity for profit by getting commercial advertisements telecast or broadcast through their various kendras and stations by charging fees.

In *general manager, telecom* verses *a srinivasa rao,* telecome department of union of india was held to be an 'industry'. Similar was the decision in *asha rani* v. *Divisional engineer, telecome department,* . In *sub-divisional inspector of post, vaikan,* verses. *Theyyam jeseph,* it was held that the functions of the postal department are part of the sovereign functions of the state, it is, therefore, not an 'industry'. This case was decided without reference to the *bangalore water supply* case. In g.m, *telecom* verses *srinivasa rao* (supra), it was held that the decision in *theyyam joseph* case cannot be treated as laying down the correct law. In *physical research laboratory l. K.g. Sharma,* the physical research laboratory was held not an 'industry' because it is purely a research organisation discharging governmental functions and a domestic enterprise than a commercial enterprise, though it is taking employees' co-operation in achieving its purpose.

In *agricultural produce market committee* verses *ashok harikuni,* it was held, on facts, that none of the functions of the market committee established under karnatka agricultural produce marketing (regulation) act, 1966 "are sovereign or inalienable functions of the state". Therefore, such a market committee was held to be an 'industry'.

In *bharat bhawan trust* verses *bharat bhawan artists'* association, the issue before the supreme court was whether a trust for promotion of art and culture could be called an 'industry'. *Without deciding the said issue finally,* it was held, since bharat bhawan trust is engaged only in promotion of art and preservation of artistic talent and its activities being not of those in which there can be a large scale production to involve co-operation of efforts of the employer and employee, it is doubtful to hold it as an 'industry' under the definition given under s. 20) of the id act.

In *state of gujarat* verses *pratam singh narsingh par mar,* it was held that if a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an 'industry', to give positive facts for coming to the conclusion that it constitutes an 'industry'. Ordinarily, a department of the government cannot be held to be an industry and rather it is a part of the sovereign function. In this case on the basis of the assertion made by the chief conservator of forests the

court held that the scheme that had been undertaken by the department of the state of gujarat wherein the employee had been recruited cannot be regarded as a part of the sovereign functions of the state. The court distinguished this case and *chief conservator of forests* verses *jaganath maruti kondhare,* . In the latter case the forest department of the state of maharashtra was held to be an 'industry'.

In *som vihar apartment owners' housing maintenance society ltd.* Verses *workmen,* association or society of apartment owners employing persons for rendering personal services to its members, held, not "industry" for the purposes of s. 2(j), industrial disputes act. Such employees would not be "workmen" under the act.

In *parmanandv. Nagar palika, dehradun,* engineering department of municipality (respondent nagar palika) was held an 'industry' inclusion of municipality in the constitution by itself would not change this position.

In *state of u.r* verses *jai bir singh,* five judge bench of the supreme court observed that interpretation given by majority judges (krishna lyer, j. Speaking for himself and bhagwati and desai, jj) in *banglore water supply & sewerage board* verses *a. Rajappa,* (1978) is over expansive and one sided i.e. Only worker oriented. Court held that it requires reconsideration by a larger bench for the following reasons:

(1) the decision in *banaglore water supply* case was not a unaminous decision;

(2) of the five judges who constituted majority, three had given a common opinion but the two others had given separate opinions projecting a view partly different from the views expressed in the opinion of the other three judges;

(3) majority opinion expressed the view that their interpretation was only tentative and temporary till the legislature stepped in and removed vagueness and confusion;

(4) judges in the said decision rendered different opinions at different points of time in some instances without going through opinion of other three judges;

(5) worker-oriented approach in construing the definition of industry, unmindful of the interest of the employer and the public who are the ultimate beneficiaries, is a one-sided approach and not in accordance with the provisions of the act;

(6) "sovereign functions", should not be confined to its traditional concept but should comprehend public welfare activities which government undertakes in discharge of its constitutional obligations and as such should fall outside the purview of "industry". Hence, hospitals and educational and research institutions, etc. Should be kept outside the purview of "industry";

(7) even though the act was amended in 1982 yet it has remained unforced and confusion still prevails;

(8) the judicial intrepretation seems to be one of the inhibiting factors in enforcement of the amended definition. The helplessness of the legislature and the executive in bringing into force the amended definition makes reference imperative;

(9) in *banglore water supply* case not all the judges in interpreting the definition clause invoked the doctrine of *noscitur a sociis.* Unanimous decision of a bench of six judges in *safdarjung hospital* expressing the view that although "profit motive" is irrelevant, in order to encompass the activity within "industry" the activity must be "analogous to trade or business in a commercial sense";

(10) experience of past years showing that the majority view in *banglore water supply,* instead of ushering in industrial peace, has given rise to large number of awards granting reinstatement in service and huge amounts of back wages to workers compelling the employers having moderate assets to close down their industries causing harm not only to employers and workers but to the public in general, they being the ultimate beneficieries;

(11) interpretation should be a balanced one having regard to the interest of the workers, the employers as also the public. Object of the act has to be kept in view;

(12) liberal profession based on talent, skill and intellectual attainments such as those of lawyers, doctors, chartered accounts, architects, etc. Should not fall within "industry".

The supreme court concluded that it is, therefore, for the large bench of the supreme court to interpret the definition clause in the present context with the experience of all these years, keeping in view the unenforced amended definition of "industry".

In *umesh korga bhandari* verses *mahanagar telephone nigam ltd.,* it was held (on the question whether mtnl included in the definition of industry as it stands) that in light of question as to scope of meaning of "industry" having been referred to larger bench in *jai bir singh* case , present appeals to remain pending till decision of the larger bench.

In *state of rajasthan* verses. *Ganeshi lal,* (2008) it was held that the accepted concept of "industry" cannot be applied to law department of the government.

General manager, telecom verses a. Srinivasa rao

(telecom department of union of india was held to be an industry.)

Facts

The matter came up before a three-judge bench because of a reference made by a two-judge bench which doubted the correctness of an earlier two-judge bench decision of the supreme court in *sub-divisional inspector of post* verses . *Theyyam joseph,* (1996) 8 scc 489, in which case it was held that the functions of the postal department are part of the sovereign functions of the state, it is, therefore, not an "industry"

Issue

Whether the telecom department of the union of india is an industry within the meaning of the definition of "industry" in section 2(j) of the industrial disputes act, 1947?

Decision of the supreme court

Telecom department of union of india was held to be an "industry" within the meaning of s. 2(7) of the industrial disputes act, 1947.

The court quoted the dominant nature test as laid down in *bangalore water supply* case and held as follows:

"a two-judge bench of this court in *theyyam joseph* case [(1996) 8 scc 489] held that the functions of the postal department are part of the sovereign functions of the state and it is, therefore, not an "industry" within the definition of section 2(j) of the industrial disputes act, 1947. Incidentally, this decision was rendered without any reference to the seven-judge bench in *bangalore water supply.* In a later two-judge bench decision in *bombay telephone canteen employees' association,* air 1997 so 2817 this decision was followed for taking the view that the telephone nigam is not an "industry". Reliance was placed in *theyyam joseph* case for that view. However, in *bombay telephone canteen employees association* case. After referring to the decision in *bangalore water supply* case, it was observed that if the doctrine enunciated in bangalore water supply case is strictly applied, the consequence is "catastrophic". With respect, we are unable to subscribe to this view for the obvious reason that it is in direct conflict with the seven-judge bench decision in *bangalore water supply* case by which we are bound. It is needless

to add that it is not permissible for us, or for the matter any bench of lesser strength, to take a view contrary to that in bangalore water supply or to bypass that decision so long as it holds the field. Moreover, the decision was rendered long back— nearly two decades earlier and we find no reason to think otherwise. Judicial discipline requires us to follow the decision in *bangalore water supply case.* We must, therefore, add that the decision in *theyyam joseph and bombay telephone canteen employees' association* cannot be treated as laying down the correct law. This being the only point for decision in this appeal it must fail."

According, the appeal was dismissed.

State of u.p verses. Jai bir singh

(there are compelling reasons, more than one, before the supreme court for making a reference on the interpretation of the definition of "industry " in section 2(j) of the act, to a large bench and for reconsideration by it, if necessary, of the decision rendered in the case of bangalore water supply & sewerage board. Date of decision 5.5.2005)

Facts

The present appeal was listed before the five judges bench (n. Santosh hedge, k.g. Balakrishnan, *d.m. Dharmadhikari,* arun kumar and b.n. Srikrishna, jj.) Of the supreme court on a reference made by a bench of three honorable judges of the court finding an apparent conflict between the decision of two benches of the court in the cases of *chief' conservation of forests verses jagannath,* of three judges and *state of gujarat verses pratamsingh narsingh par mar,* of two judges. On the question of whether "social forestry department" of state, which is a welfare scheme undertaken for improvement of the environment, would be covered by the definition of "industry" under section 2(j) of the industrial disputes act, 1947, the aforesaid benches (supra) of the court culled out differently the ratio of the seven-judge bench decision of the court in the case *of bangalore water supply & sewerage board verses rajappa,* the bench of three judges in the case *of chief conservator of forests verses jagannath maruti kondhare* based on the decision *of bangalore water supply* case came to the conclusion that "social forestry department is covered by the definition of "industry" whereas the two-judge bench decision in *state of gujarat verses pratamsingh narsingh parmar* took a different view.

Decision of the supreme court

There are compelling reasons before the supreme court for making a reference on the interpretation of the definition of "industry" in section 2(j) of the act, to a larger bench for reconsideration by it, if necessary, of the

decision rendered in the case *of bangalore water supply & sewerage board.* The large bench will have to necessarily go into all legal questions in all dimensions and depth.

The decision in *bangalore water supply* is not a unanimous decision. Of the five judges who constituted the majority, three have given a common opinion but two others give separate opinions projecting a view partly different from the views expressed in the opinion of the other three judges. Beg, c.j. Having retired had no opportunity to see the opinions delivered by the other judges subsequent to his retirement. Krishna lyer, j. And the two judges who spoke through him did not have the benefit of the dissenting opinion of the other two judges and the separate partly dissenting opinion of chandrachud, j. As those opinions were prepared and delivered subsequent to the delivery of the judgement in *bangalore water supply* case. Thus the judges therein delivered different opinions at different points of time and in some cases without going through or having an opportunity of going through the opinions of other judges. They have themselves recorded that the definition clause in the act is so wide and vague that it is not susceptible to a very definite and precise meaning. Hence it was suggested that to avoid reference of the vexed question of interpretation to larger benches of the supreme court it would be better that the legislature intervenes and clarifies the legal position by simply amending the definition of "industry". The legislature responded by amending the definition of "industry" by act 46 of 1982. But more than 23 years (1982 to 2005) the amended provision not having been brought to force, the unamended definition with the same vagueness and lack of precision continues to confuse the courts and the parties. The inaction of the legislative and executive? It necessary for the judiciary to reconsider the subject over and again in the experience of the working of the provisions on the basis the interpretation in the judgement *of bangalore water supply* case rendered *as far back as in the year 1978. In such a situation, it is difficult to ascertain whether the opinion of krishna iyer, j given on his own behalf and on behalf of bhagwati and desai j.l can be held to be an authoritative precedent which would require no reconsideration. Even the judges themselves expressed the view that the exercise of interpretation done by each of them was tentative and was only a temporary exercise till the legislature stepped in. The question arises whether the amended definition, which is now undoubtedly a part of the statute, although not enforced as a relevant piece of subsequent legislation which can be taken aid of to amplify or restrict the ambit of the definition of industry in section*

The definition clause read with other provisions of the act under consideration deserves interpretation keeping in view interests of the employer, who has put his capital and expertise into the industry and the workers who by their labour equally contribute to the growth of the industry. It is a piece of social legislation. In interpreting, therefore, the industrial law, which aims at promoting social justice, interests both of employers, employees and in a democratic society, people, who are the ultimate beneficiaries of the industrial activities, have to be kept in view. A worker-oriented approach in *bang/ore water supply* case in construing the definition of industry, unmindful of the .interest of the employer or the owner of the industry and the public, would be a one sided approach and not in accordance with the provisions of the act.

A necessity to re-examine the decision rendered in *bangalore water supply* case was felt in *coir board* case wherein it was observed as follows:

"looking to uncertainty prevailing in this area and in the light of the experience of the last two decades in applying the test laid down in the case of *bangalore water supply & sewerage board* it is necessary that the decision in *bangalore water supply & sewerage board* case is re-examined. The experience of t he last two decades does not appear to be entirely happy. Instead of leading to industrial peace and welfare of the community (which was the avowed purpose of artificially extending the definition of inudsliy), the application of the industrial disputes act to organizations which were, quite possibly, not intended to be so covered by the machinery set up under the industrial disputes act, might have done more damage than good, not merely to the organizations but also to employees by the curtailment of employment opportunities".

Therefore an order of reference to the chief justice for construing a larger bench of more than seven judges, if necessary was passed. However, where? The matter was listed before a three-judge bench was refused both on the ground that the industrial disputes act had undergone an amendment and that the matter did not deserve to be referred to a larger bench as the decision of seven judges in *bangalore water supply* case was binding on benches of less than seven judges. But no such inhibition limits the power of the present bench of five judges which has been constituted on a reference made due to apparent conflict between the judgements of two different benches of the supreme court.

Exploitation of workers and employers has to equally checked. But the law and particularly industrial law needs to be so interpreted-as to ensure that neither the employers nor the employees are in a position to dominate the other. Both should be able to co-operate for their mutual benefit in the growth of industry and thereby serve public good. An over expansive interpretation of the definition "industry" might be a deterrent to private enterprise in india where public employment opportunities are scare. The public, should, therefore, be encouraged towards self-employment. To embrace within the definition of "industry" even liberal profession like lawyers, architects, doctors, chartered accountants and the like, which are occupations based on talent, skill and intellectual attainments, is experienced as a hurdle by professionals in their self-pursuits. In carrying on their professions, if necessary, some employment is generated, that should not expose them to the rigors of the act. No doubt even liberal professions are required to be regulated and reasonable restrictions in favour of those employed for them can, by law by imposed, but that should be subject of a separate suitable legislation.

The learned judges in *bangalore water supply & sewerage board* case, seems to have confined only such sovereign frictions' outside the purview of "industry" which can be termed strictly as constitutional functions of three wings of the state i.e. Executive, legislature and judiciary. The concept of sovereignty which is confined to "law and order", "defence", "law-making" and "justice dispensation". In a democracy governed by the constitution the sovereignty vests in die people and the state is obliged to discharge its constitutional obligations contamed in the directive principles of state policy in part iv of the constitution of india. From that point of view, whenever the government undertakes public welfare activities in discharge of its constitutional as provided in part iv of the constitution, such activities should be treated as activities in discharge of sovereign functions falling outside the purview of "industry". Whether employees employed in such welfare activities of the government require protection, apart from the constitutional rights conferred on them, may be a subject of separate legislation but for that reason, such governmental activities cannot be brought within the fold of industrial law by giving an undue expansive and wide meaning to the words used in the definition of industry,

It is high time for the supreme court to re-examine the judicial interpretation given by it to the definition of "industry". The legislature should be allowed greater freedom to come farward with a more comprehensive legislation to meet the demands of employers and employees in the public and private sectors. The-inhibition and the difficulties which are being experienced by the legislature and the executive in bringing into force the amended industrial law, more due to judicial interpretation of the definition of "industry" in *bangalore water supply & sewerage board* case (1978) 2 scc 213 need to be removed. The experience of the working of the provisions of the act would serve as a guide for a better and more comprehensive law on the subject to be brought into force without inhibition.

The word "industry" seems to have been redefined under the amendment act keeping in view the judicial interpretation of the word "industry" in the case of *bangalore water supply.* Had there been no such expansive definition of "industry" given in *bangalore water supply* case it would have been open to parliament to bring in either a more expansive or a more restrictive definition of industry by confining it or not confining it to industrial activities other than sovereign functions and public welfare activities of the state and its departments. Similarly, employment generated in carrying on of liberal profession could be clearly included or excluded depending on social conditions and demands of social justice. Comprehensive change in law and/or enactment of new law had not been possible because of the interpretation given to the definition of "industry" in *bangalore*

water supply case. The judicial interpretation seems to have been one of the inhibiting factors in the enforcement of the amended definition of the act for the last 23 years.

The six-judge bench in *safdarjung hospital* case, rightly expressed the view that keeping in view the other provisions of the act and words used in the definition clause, although "profit motive" is irrelevant, in order to encompass the activities within the word "industry", the activity must be *"analogous to trade or business in a commercial sense"* and that the mere enumeration of "public utility services" in section 2(n) read with first schedule of id act, 1947 should not be held decisive, unless the public utility service answers the test of it being an "industry" as defined in clause 2(j) of section 2. The six judges also considered the inclusion of services such as hospitals and dispensaries as public utility services in the definition under section 2(n) of the act. In construing the definition clause and determining its ambit, one has not to lose sight of the fact that in activities like hospitals and education, concepts like right of the workers to go on "strike" or else the employer's right to "close down" and "lay off are not contemplated because they are services in which the motto is "service to the community". If the patients or students are to be left to the mercy of the employer and employees exercising their rights at will, the very purpose of the service activity would be frustrated.

The supreme court must, therefore, reconsider where the line, excluding some callings, services or undertakings from the purview of "industry" should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in section 2(j). That no doubt is a rather difficult problem to resolve more so when both the legislature and the executive are silent and have kept an important amended provision of law dormant on the statute-book.

Pressing demands of the competing sectors of employers and employees and helplessness of the legislature and the executive in bringing into force the amendment act compelled the present bench of the supreme court to make the reference. Therefore, the present bench ordered that the cases be now placed before the honorable chief justice of india for constituting a suitable larger bench for reconsideration of the judgement of the supreme court in the case of *bangalore water supply.*

Workmen of dimakuchi tea estate verses management of dimakuchi tea estate

facts

One dr. K.c. Banerjee was appointed by the respondents as their assistant medical officer, on three months production. After three months his services were terminated, on the ground of incompetency, with one month's salary in lieu of the notice. On the espousal of his cause by the assam cha karamchari sangh, the government of assam referred to a tribunal a dispute about his reinstatement. The management contended that dr. Banerjee being not a workman his case was not one of an industrial dispute under the act and was, therefore, beyond the jurisdiction of the tribunal to give any relief to him. The tribunal accepted the management's plea. The labour appellate tribunal, on appeal, affirmed the decision. By special leave the workmen appealed to the supreme court.

issue

Whether the dispute in relation to a person who is not a workman falls within the scope of an industrial dispute under s. 2(k) of the act?

Decision of the supreme court

The supreme court held that where the workmen raise the dispute as against their employer the "persons regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour (as the case may be) the parties to the dispute have a direct or substantial interest. In the absence of such interest the dispute cannot be said to be a real dispute between the parties. Where the workmen raise a dispute as against their employer the person regarding whose

employment, non-employment, terms of employment or conditions of labour the dispute is raised need not be strictly speaking a "workman" within the meaning of the act but must be one in whose employment, non-employment, terms of employment or conditions of labour the workmen as a class have a direct or substantial interest." applying these principles the court concluded that dr. Banerjee who belonged to the medical or technical staff was not a workman and appellants had neither direct nor substantial interest in his employment or non-employment and even assuming that he was a member of the same trade union it cannot be said on the test laid down that the dispute regarding his termination of service was an industrial dispute within the meaning of s.2(k)of the act.

In the course of his judgement c.r. Dass, c.j., speaking for the court observed as under:

> "the expression "any person" occurring in the third part of the definition clause (k) cannot mean any body or everybody in this wide world...it is well settled that "the words of the statute, when there are doubts about their meaning, are to be understood in the sense in which they best harmonies with the subject of the enactment and the object which the legislature has in view" ...the expression "any person" in the definition clause means, in our opinion, a person in whose employment or non-employment, or terms of employment or with condition of labour the workmen as a class have a direct or substantial interest with whom they have, under the scheme of the act, community of interest."

Municipal corporation of delhi verses female workers (muster roll)

(workmen including those employed on muster roll for carrying on activity of delhi municipal corporation in undertaking construction, laying and repairing of roads and digging of trenches were held to be "workmen" under the id act.)

Facts

Female workers (muster roll), engaged by the municipal corporation of delhi (for short "the corporation"), raised a demand for grant of maternity leave which was made available only to regular female workers but was denied to them on the ground that their services were not regularized and, therefore, they were not entitled to any maternity leave. Their case was espoused by the delhi municipal workers union (for short "the union") and, consequently, the following question was referred by the secretary (labour), delhi administration to the industrial tribunal for adjudication:

"whether the female workers working on muster roll should be given any maternity benefit? If so, what directions are necessary in this regard?"

The union filed a statement of claim in which it was stated that the municipal corporation of delhi employs a large number of persons including female workers on muster roll and they are made to work in the capacity for years together

though they are recruited against the work of perennial nature. It was further stated that the nature of duties and responsibilities performed and undertaken by the muster-roll, which have been working with the municipal corporation of delhi for years together, have to work very hard in construction projects and maintenance of roads including the work of digging trenches etc. But the corporation does riot grant any maternity benefit to female workers who are required to work even during the period of mature pregnancy or soon after the delivery of the child. It was pleaded that the female workers required the same maternity benefits as were enjoyed by regular female workers under the maternity benefit act, 1961. The denial of the benefits exhibits a negative attitude of the corporation in respect of a humane problem.

The corporation in their written statement, filed before the industrial tribunal, pleaded that the provisions under the maternity benefit act, 1961 or the central civil services (leave) rules were not applicable to the female workers, engaged on muster roll, as they were all engaged only on daily wages. It was also contended that they were not entitled to any benefit under the employees' state insurance act, 1948. It was for these reasons that the corporation contended that the demand of the female workers (muster roll) for grant of maternity leave was liable to be rejected.

The industrial tribunal issued a direction to the management of the municipal corporation of delhi to extend the benefits of the maternity benefit act, 1961 to such muster-roll female employees who were in continuous service of the management for three years or more and who fulfilled the conditions set out in section 5 of that act.

Decision of the supreme court

The court held that the activity of delhi municipal corporation in undertaking construction, laying and repairing of roads and digging of trenches covered by the definition of industry within the meaning of s. 2(1) of the id act. Therefore, the workmen including those employed on muster roll for carrying out such activities were "workmen" under the id act. The direction of the industrial tribunal was appreciated by the court on the ground of social and economic justice as emphasized by the court in its earlier decision in crown aluminum works verses workmen.

The court said:

"a just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honored and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards here and must realize the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while rearing up the child after birth. The maternity benefit act, 1961 aims to provide all these facilities to a working woman in a dignified so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimized for forced absence during the pre-or post-natal period." j.h. Jadhav verses forbes gotak ltd.

(there is necessity of espousal of cause of single workman by "the union"— minority unions and "outside unions included.)

Facts

The appellant was employed by the respondent. He claimed promotion as a clerk. When this was not granted, the appellant raised an industrial dispute. The question whether the appellant was justified in his prayer for promotion with effect from the date that his juniors were promoted was referred to the industrial tribunal by the state government. It was centended by the respondent that the individual dispute raised by the appellant was not an industrial dispute within the meaning of section 2(k) of the industrial disputes act, 1947, as the workman was neither supported by a substantial number of workmen nor by majority union. His cause was supported by gotak mills staff union—minority union.

Issue

Whether the appellant was justified in his prayer for promotion with effect from the date that his juniors were promoted?

Decision of the tribunal and the high court

The tribunal came to the conclusion that in view of the evidence given by the general secretary of the gotak mills staff union and the documents produced, it was clear that the appellant's cause had been espoused by the union which was one of the unions of the respondent employer. On the merits, the tribunal accepted the appellant's contentions that employees who were junior to him had been promoted as clerks. It noted that no records had been produced by the respondent to show that the management had taken into account the appellant's production records, efficiency, attendance or behaviour while denying him promotion. The tribunal concluded that the act of the respondent in denying promotion to the appellant amounted to unfair labour practice. The respondent was directed to promote the appellant as a clerk from the date his juniors were promoted and to give him all consequential benefits.

The division bench of the high court construed section 2(j) of the industrial disputes act, 1947 and came to the conclusion that an individual dispute is not an industrial dispute unless it directly and substantially affect the interest of other workmen. Secondly, it was held that an individual dispute should be taken up by a union which had representative character or by a substantial number of employees, before it would be converted into an industrial dispute neither of which according to the division bench of the high court, had happened in the present case. It was held that there was nothing on record to show that the appellant was a member of the union or that the dispute had been espoused by the union by passing any resolution in that regard.

Decision of the supreme court

It was held that there is necessity of espousal of cause of single workman by "the union"—minority unions and "outside" unions included. The requirements for an individual dispute to become an industrial dispute are:

(1) dispute is connected with employment or non-employment of a workman; and

(2) dispute between a single workman and his employer is sponsored or espoused by the union of workmen or a number of workmen "the union" merely indicates the union to which the employee belongs even though it may be a union of a minority of employees in the establishment, or the union of another establishment belonging to the same industry. In the latter case it would be open to that union to take up the cause of the workmen if it is sufficiently representative of those workmen. It was further held that there is no particular form prescribed to effect espousal of cause of single workman by the union. Normally union must express itself in the form of a resolution which should be proved if in issue. However, proof of support by the union may also be available in other ways. It would depend on facts of each case.

The supreme court held that the division bench of the high court misapplied principles of judicial review under article 226 in interfering with the decision of tribunal. There was evidence which was considered by the tribunal in coming to the conclusion that the appellant's cause had been espoused by the union. High court should not have upset this finding without holding that the conclusion was irrational or perverse. Hence, the high court's conclusion was unsustainable.

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J.h. Jadhav* verses*. Forbes gokak ltd

Ruma pal, j. - 2**.** The appellant was employed by the respondent. He claimed promotion as a clerk. When this was not granted, the appellant raised an industrial dispute. The question whether the appellant was justified in his prayer for promotion with effect from the date that his juniors were promoted was referred to the industrial tribunal by the state government. In their written statement before the tribunal the respondent denied the appellant's claim for promotion on merits. In addition, it was contended by the respondent that the individual dispute raised by the appellant was not an industrial dispute within the meaning of section 2(*k*) of the industrial disputes act, 1947, as the workman was neither supported by a substantial number of workmen nor by a majority union. The appellant claims that his cause was espoused by the gokak mills staff union.

3**.** Before the tribunal, apart from examining himself, the general secretary of the union was examined as a witness in support of the appellant's claim. The general secretary affirmed that the appellant was a member of the union and that his cause has been espoused by the union. Documents including letters written by the union to the deputy labour commissioner as well as the objection filed by the union

before the conciliation officer were adduced in evidence. The tribunal came to the conclusion that in view of the evidence given by the general secretary and the documents produced, it was clear that the appellant's cause had been espoused by the union which was one of the unions of the respondent employer. On the merits, the tribunal accepted the appellant's contentions that employees who were junior to him had been promoted as clerks. It noted that no record had been produced by the respondent to show that the management had taken into account the appellant's production records, efficiency, attendance or behaviour while denying him promotion. The tribunal concluded that the act of the respondent in denying promotion to the appellant amounted to unfair labour practice. An award was passed in favour of the appellant and the respondent was directed to promote the appellant as a clerk from the date his juniors were promoted and to give him all consequential benefits.

4**.** The award of the industrial tribunal was challenged by the respondent by way of a writ petition. A single judge dismissed the writ petition. The respondent being aggrieved filed a writ appeal before the appellate court. The appellate court construed section 2(*k*) of the industrial disputes act, 1947 and came to the conclusion that an individual dispute is not an industrial dispute unless it directly and substantially affects the interest of other workmen.

Secondly, it was held that an individual dispute should be taken up by a union which had representative character or by a substantial number of employees, before it would be converted into an industrial dispute neither of which according to the appellate court, had happened in the present case. It was held that there was nothing on record to show that the appellant was a member of the union or that the dispute had been espoused by the union by passing any resolution in that regard.

5**.** The definition of "industrial dispute" in section 2(*k*) of the act shows that an industrial dispute means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment or with the conditions of labour, of any person. The definition has been the subject-matter of several decisions of this court and the law is well settled. The *locus classicus* is the decision in ***workmen* verses. *Dharampal premchand (saughandhi)*** where it was held that for the purposes of section 2(*k*) it must be shown that: (*1*) the dispute is connected with the employment or non-employment of a workman. (*2*) the dispute between a single workman and his employer was sponsored or espoused by the union of workmen or by a number of workmen. The phrase "the union" merely indicates the union to which the employee belongs even though it may be a union of a minority of the workmen. (*3*) the establishment had no union of its own and some of the employees had joined the union of another establishment belonging to the same industry. In such a case it would be open to that union to take up the cause of the workmen if it is sufficiently representative of those workmen, despite the fact that such union was not exclusively of the workmen working in the establishment concerned. An illustration of what had been anticipated in ***dharampal*** case is to be found in ***workmen* verses *indian express (p) ltd.*** Where an "outside" union was held to be sufficiently representative to espouse the cause.

6**.** In the present case, it was not questioned that the appellant was a member of the gokak mills staff union. Nor was any issue raised that the union was not of the respondent establishment. The objection as noted in the issues framed by the industrial tribunal was that the union was not the majority union. Given the decision in ***dharampal*** case the objection was rightly rejected by the tribunal and wrongly accepted by the high court.

7**.** As far as espousal is concerned there is no particular form prescribed to effect such espousal. Doubtless, the union must normally express itself in the form of a resolution which should be proved if it is in issue. However, proof of support by the union may also be available *aliunde*. It would depend upon the facts of each case. The tribunal had addressed its mind to the question, appreciated the evidence both oral and documentary and found that the union had espoused the appellant's cause.

8. The division bench misapplied the principles of judicial review under article 226 in interfering with the decision. It was not a question of there being no evidence of espousal before the industrial tribunal. There was evidence which was considered by the tribunal in coming to the conclusion that the appellant's cause had been espoused by the union. The high court should not have upset this finding without holding that the conclusion was irrational or perverse. The conclusion reached by the high court is therefore unsustainable.
9. For all these reasons the decision of the high court cannot stand and must be set aside.
10. Learned counsel appearing for the respondent then submitted that the matter may be remanded back to the division bench of the high court as the court had not considered the other arguments raised by the respondent while impugning the award of the industrial tribunal. It appears from the impugned decision that the only other ground raised by the respondent in the writ appeal was that the grievance of the appellant had been belatedly raised. We have found from the decision of the industrial tribunal that no such contention had been raised by the respondent before the tribunal at all. We are not prepared to allow the respondent to raise the issue before the high court.
11. The respondent finally submitted that pursuant to disciplinary proceedings initiated against the appellant in the meanwhile, the appellant had been dismissed from service and that the order of dismissal was the subject-matter of a separate industrial dispute. We are not concerned with the propriety of the order of dismissal except to the extent that the appellant cannot obviously be granted actual promotion today. Nevertheless, he would be entitled to the monetary benefits of promotion pursuant to the award of the industrial tribunal which is the subject-matter of these proceedings up to the date of his dismissal. Any further relief that the appellant may be entitled to must of necessity abide by the final disposal of the industrial dispute relating to the order of dismissal which is said to be pending.
12. We therefore allow the appeal and set aside the decision of the high court. The award of the industrial tribunal is confirmed subject to the modification that the promotion granted by the award will be given effect to notionally for the period as indicated by the award up to the date of the appellant's dismissal from service. Reliefs in respect of the period subsequent to the order of dismissal shall be subject to the outcome of the pending industrial dispute relating to the termination of the appellant's services. If the termination is ultimately upheld, the appellant will be entitled only to the reliefs granted by us today. If on the other hand the termination is set aside, the appellant will be entitled to promotion as granted by the award.

Dharangdhara chemical works ltd. Verses state of saurashtra

("the workmen must have consented to give his personal services and not merely to get the work done, but if he is bound under his contract to work personally, he is not excluded from the definition, simply because he has assistance from others, who work under him". Halsbury's laws of england.)

Facts

The appellant company took from the state government on lease certain salt works at kudain in the state of saurashtra. The salt was manufactured from rain water which soaking down the surface becomes impregnated with saline matter. The operations were seasonal in character and commenced sometime in october at the close of the monsoon. The entire area was divided into small plots *called pattas. Thepattas* were allotted to *aghiaras* and a sum of rs. 400/- in each of *the pattas* were paid to the *aghiaras* as initial expenses. The *aghiaras* were free to engage extra labour at their own cost. They were free to work when they liked as no hours of work was prescribed and no muster roll was maintained. In rainy season when they were free from this work they returned to their villages and become engaged in their agriculture work. The salt manufactured by the *aghiaras* used to be tested

by the appellant company at several stages of manufacture. If the salt was found to be of right quality, the *aghiaras* were paid at the rate of rs. 0-5-6 per mound. Salt which was rejected belonged to the appellant company and the *aghiaras* could not either remove the salt manufactured by them or sell it.

In about 1950, disputes arose between *aghiaras* and the appellants as to the condition under which the *aghiaras* should be engaged by the appellants in the manufacturer of salt. The government of saurashtra referred the dispute for adjudication. The appellants contested the proceedings on the ground, *inter alia,* that the status of the *aghiaras* was that of independent contractors and not of workmen.

Issue

Whether the *aghiaras* working at the salt works at kudain were workmen within the meaning of the term as defined in the industrial dispute act, 1947?

Decision of the industrial tribunal, labour appellate tribunal and the high court

The industrial tribunal, labour appellate tribunal and the high court held that *aghiaras* were workmen within the meaning of s.2(s) of the industrial disputes act, 1947.

Decision of the supreme court

1. The essential condition of a person being a workman within the meaning of s.2(s) is that he must be employed in an industry and a relationship of employer and employee or master and servant must exist between his employer and him.

2. The test to determine employer-employee relationship is whether having regard to the nature of the work employer had due control and supervision in some reasonable sense not only on what is to be done but also on *how it is to be done.* The nature of extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. It is a question of fact in each case. In *short verses j. W. Henderson,* (1946) 24 ac, the house of lords have stated four indicia of a contract of service, viz., (a) the master's power of selection of his servant, (b) the payment of wages or other remuneration, (c) the master's right to control the method of doing the work, and (d) the master's right of suspension and dismissal.

3. A person can be a workman even though he is paid not per day but by the job. The test is whether the employer retained the right to control the work and it makes no difference whether the man was employed on time basis or piece or job basis. Therefore, *aghiaras* who did the piece work did not cease to be workmen on this ground.

4. What determine whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has then he is a workman and the fact that he takes assistance from other persons would not affect his status. The workman must have agreed to give his personal services and not merely to get the work done and thus if he is bound under his contract to work personally, he is not excluded from the definition, simply because he has assistance from others, who work under him. Therefore the fact that the *aghiaras* were entitled to engage other persons to do the work was not conclusive proof of the fact that they were independent contractors.

5. Whether or not in any given case the relationship of master and servant exists is purely one of fact.

6. The nature or extent of control which is requisite to establish the of master-servant relationship cannot be precisely defined. There are certain cases in which the master cannot control the manner in which work is done. Therefore the correct approach is whether having regard to the nature of work, there is due control and supervision by the employer.

The supreme court held that the *aghiaras* engaged in salt work who have agreed to work personally and on whom there was due control and supervision having regard to the nature of work were 'workmen' even though they took the assistance of others.

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Mangalore ganesh beedi workers **verses** ***union of india***

Ray, c.j. - the provisions of the beedi and cigar workers (conditions of employment) act, 1966 referred to as “the act” are impeached as unconstitutional in these petitions and appeals.
2**.** Broadly stated, the act is challenged on the grounds...… the restrictions imposed by the act violate freedom of trade and business guaranteed under article 19(1)(*g*). The act imposes unreasonable burdens in cases where a manufacturer or trade mark holder of beedi has no master and servant relationship and no effective control on independent contractors or home-workers. The manufacturer or trade mark holder is rendered liable as the principal
Employer of contract labour.
3**.** The petitioners and the appellants are of two characters. The majority are proprietors of beedi factories and owners of trade mark registered under the trade marks act in relation to beedies. Some are home-workers.

4. The beedi industry is widespread in this country. The manufacture of beedi is done in stages. The tobacco is blended often with some other ingredient. A small quantity of it is put on the beedi leaf which is previously wet to render it flexible to prevent any crushing of leaf and is also cut to size. The beedi leaf is then rolled keeping the tobacco within it and its ends are then closed. The beedis thus rolled are collected and warmed or roasted after which they are ready for packing, labelling and sale. Where the proprietor owns a trade mark, the trade mark labels are affixed to the individual beedis as also on the packets.
5. The work of wetting and cutting of the wrapper leaves is one of the items of work in the process. Power is seldom employed for the purpose. The industry depends entirely upon human labour. If more than 20 workers are employed in a particular place for the manufacture of beedis, the provisions of the factories act, 1940 will apply to the premises.
6. Three systems are adopted in the manufacture of beedis. First is the factory system. There the manufacturer is the owner of the factory. Workers gather and work under his supervision as his employees. Second is the contract system of employment. That is the most prevalent form. Under this system, the proprietor gives to the middlemen quantities of beedi leaves and tobacco. The contractor on receiving the materials manufactures beedis (*1*) by employing directly labourers and manufacturing beedis or (2) by distributing the materials amongst the home-workers, as they are called, mostly women who manufacture beedis in their own homes with the assistance of other members of their family including children. The third system is that of outworkers. They roll beedis out of the tobacco and beedi leaves supplied by the proprietor himself without the agency of middlemen. The beedis thus supplied whether by the outworkers or contractor are roasted, labelled and packed by the proprietor and sold to the public.
7. Under these systems, the contractor engages labourers less than the statutory number to escape the application of the factories act. There is a fragmentation of the place of manufacture of beedis with a view to evading the factory legislation. Sometimes there is no definite relationship of master and servant between the actual worker and the ultimate proprietor. Branch managers or contractors are often men of straw. The proprietor will not be answerable for the wages of the outworkers because there is no privity of contract between them. A large body of actual workers are illiterate women who could with impunity be exploited by the proprietors and contractors. There is in this background an indiscriminate and undetectable employment of child labour. The contractor being himself dependent on the proprietor has little means to have any organised system. Women and infirm persons can earn something by rolling beedis. The dependence of these people particularly the women shows that they have little bargaining power against powerful proprietors or contractors.
8. A typical contractor agrees with the proprietor to purchase tobacco and to pay for it at the ruling rate and to supply the proprietor with such quantity of beedis as will be fixed by the proprietor. He also undertakes not to use any tobacco other than that supplied by the proprietor. The proprietor has the authority to send his representative to inspect the place or places of manufacture. The contractor undertakes not to enter into any agreement of similar nature with any other concern to make beedis. The agreement stipulates that the contractor will be the sole employer answerable in regard to the disputes raised by the workers.
9. There was a royal commission on labour in india in 1931. The findings were these. The making or beedi is an industry widely spread over the country. It is partly carried on in the home but mainly in the workshops in the bigger cities and towns. Every type of building is used, but small workshops preponderate. It is there that the graver problems mainly arise. Many of these places are small airless boxes. There are no windows where workers are crowded. There are dark semi basements with damp and floors. Sanitary conveniences and arrangements for removal of refuses are practically absent. Payment is by piece rate. The hours are unregulated. Many smaller workshops are open day and night. There are no intervals for meals. There are no weekly holidays.
10. In 1944, the government of india appointed a committee under the chairmanship of sri d.v. Rege to investigate conditions of industrial labour. The report referred to the contract system whereby the factory owner engaged a large number of middlemen, supplied them with raw materials and purchased finished products from them. The report found that unhealthy working conditions, long hours of work, employment of women and children, deduction from wages and the sub-contract