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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P. (C) 8950/2014

LAWRENCE MESSY ..... Petitioner
Through: Mr. Arvind Kr. Singh, Adv.

versus

DIOCESE OF DELHI ..... Respondent
Through: Mr. Sunil Kr. Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

% **J U D G M E N T**
11.09.2019

1. The order, dated 30th August, 2014, wherefrom the present writ petition emanates, adjudicated an application, preferred by the petitioner under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the ID Act").

2. Before proceeding further, it would be proper to set out, at the outset, Section 33C(1) and (2) of the ID Act, thus:

> "**33C. Recovery of money due from an employer-**
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> (1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of [Chapter VA or Chapter VB] the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government

> for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:
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> Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:
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> Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.
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> (2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months:
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> Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

3. In his application under Section 33C(2), the petitioner averred that:

(i) he had been appointed as a peon, in the grade of 110-5-150, in the office of the respondent, *vide* appointment letter dated 26th June, 1971, with effect from 1st July, 1971, and had

been confirmed on the said post, *vide* letter dated 17th February, 1972,

(ii) his last drawn salary was ₹ 5,000/- per month,

(iii) he had performed his duties as best he could, and to the complete satisfaction of the respondent, and was never subject matter of any complaint in that regard,

(iv) *vide* circular dated 20th August, 1999, the respondent revised the salary of the various staff members working in different capacities in its organisation; however, the benefit of the said revision of salary was never extended to the petitioner, despite various requests and representations made by him,

(v) the health of the petitioner suddenly deteriorated on 20th June, 2000, whereafter he remained consistently in a poor state of health but continued to work, for the respondent, till 2008, and

(vi) the services of the petitioner were suddenly terminated by the respondent, whereafter he remained unemployed.

Alleging, in the circumstances, that he had been illegally terminated from service, and had not been paid wages or salary from May, 2000, the petitioner claimed that an amount of ₹ 8,84,584/– was due, to him, from the respondent, for the recovery of which he was entitled to maintain a claim under Section 33C(2) of the ID Act. The petitioner, therefore, prayed that an award be made, in his favour, holding that he

was entitled to superannuation benefits and full back wages from May, 2000 till the date of his retirement, with all consequential benefits along with costs.

4. In its reply, to the aforesaid statement of claim, of the petitioner, the respondent contended that:

(i) the respondent was not an "industry" as it was a church, run by the Diocese, under the charge of the Bishop, and it was the duty of every Diocese to spread the knowledge of the Gospel throughout its territory and cater to the spiritual needs of the members of the church,

(ii) the Diocese of Delhi, i.e., the respondent, was one of the churches of North India, operating over the territory of Delhi, and managed its financial requirements out of total contributions of the various churches within its territory, which, in turn, thrived on donations and voluntary contributions of its congregations,

(iii) neither, therefore, could the respondent be regarded as an "industry", nor could the petitioner be regarded as a "workman" under the ID Act,

(iv) the respondent was not an industrial concern, having any business or commercial activities, or involved in the generation of income or profit; it was an organisation in the service of God,

(v) the claim of the petitioner was not, therefore, maintainable under the ID Act, and the Labour Court was not competent to adjudicate thereon,

(vi) the claim of the petitioner was, moreover, hopelessly barred by time,

(vii) the petitioner took voluntarily retirement, availing the benefits of the VRS Scheme, from the service of the respondent, on 20th October, 2001,

(viii) even till that date, the petitioner remained absent, without authority, on several occasions, and was also indulging in unlawful activities,

(ix) during the period for which the petitioner served with the respondent, he was paid the salary mutually agreed upon, between them,

(x) the said salary was, in fact, withdrawn, by the petitioner, till May, 2000, at which time his last drawn salary was ₹ 4,275/-,

(xi) from May 2000 onwards, the petitioner remained absent from duty without any prior approval or sanction or leave, resulting into the respondent having to write, to him, on 6th July, 2000, intimating him that he was unauthorisedly absent from duty,

(xii) though, in July, 2000, the petitioner wrote, to the respondent, stating that he was unwell, no medical certificate, in support of the said statement, was furnished; consequently, there could be no question of sanctioning of any medical leave,

(xiii) in the circumstances, the respondent wrote, on 25th July, 2000, to the petitioner, requiring him to produce medical certificates in support of his purported indisposition,

(xiv) after continuing to remain absent without authorisation, the petitioner applied, in 2001, for voluntary retirement, which was approved, by the respondent, *vide* letter dated 4th June, 2002, also requiring the petitioner to settle his dues and hand over vacant possession of the quarter allotted to him,

(xv) the petitioner, however, did neither,

(xvi) on 27th November, 2002, the petitioner wrote, to the respondent, acknowledging the fact that he stood voluntarily retired from the service,

(xvii) the dues payable to the petitioner, as on 27th September, 2001, worked out to ₹ 74,954/- along with gratuity of ₹ 79,183/-,

(xviii) no claim, for payment of gratuity was, however, maintainable, under the ID Act, the field being exclusively governed by the Payment of Gratuity Act, 1972 (hereinafter referred to as "the Payment of Gratuity Act"),

(xix) the petitioner's claim for House Rent Allowance was baseless, as he had been allotted a residential accommodation by the respondent, and

(xx) the petitioner had, therefore, never been terminated by the respondent, but had, of his own will and volition, voluntarily retired from its services, after having remained unauthorisedly absent from duty from May, 2000.

The respondent also denied having received any legal notice, issued by the petitioner.

5. On 10th May, 2010, the following issues were framed, by the Labour Court, based on the rival pleadings:

"(1) Whether the management is not an industry under Section 2(j) of I.D. Act?

(2) Whether the claimant is barred by limitation as alleged in preliminary objections of the Written statement?

(3) Whether the workman is entitled to recover any amount as mentioned in the claim application?

(4) Relief."

6. One witness, alone, was cited, by the petitioner and respondent; the petitioner citing himself as his only witness, as WW-1 and the respondent citing Mr. Prabhakar Mahlan, its Honorary Secretary, as its only witness, as MW-1.

7. The petitioner, as WW-1, filed his affidavit-in-evidence, which was proved, by him, in his examination-in-chief, and was, accordingly, exhibited as Ex. WW-1/A.

8. The petitioner, as WW-1, also filed ten documents, which were exhibited as Ex. W-1/1 to Ex. W-1/10. Ex. W-1/1 was an application, by the petitioner to the respondent, stating that he was unable to discharge his services as peon on account of his ill-health, and, accordingly, seeking voluntary retirement. Ex. W-1/2 was a Memo, dated 20th June, 2000, from the respondents to the petitioner, to the effect that the petitioner could hold office till he attained the age of 65 and that, as he had already attained the said age, on expiry of three months from the date of the said memo, he would be deemed to have vacated the office of peon. The said communication further stated that the petitioner was entitled to retiral benefits w.e.f. 20th September, 2000. Ex. W-1/4 was the letter, confirming the services of the petitioner as peon. Ex. W-1/7 was a communication, from the respondent, to the petitioner, dated 4th June, 2002, accepting the application, dated 10th September, 2001, of the petitioner seeking voluntary retirement and, accordingly, voluntarily retiring him from service w.e.f. 20th October, 2001. Ex. W-1/8 was a communication, dated 6th July, 2000, from the respondents to the petitioner, alleging that the petitioner was unauthorisedly absent from work from 16th July, 2000, without obtaining leave.

9. The petitioner was cross-examined. During cross-examination, he admitted that he had worked, with the respondent, till 11th May, 2000, and stated that the averment, in his affidavit-in-evidence, to the effect that he had worked with the respondent till 2008, was incorrect. Supporting the making of such an incorrect averment, the petitioner stated that he did not understand English, and that he had not been read over, or explained, either the Statement of Claim, or the affidavit-in-evidence, tendered by him before the Labour Court. He, nevertheless, asserted that his claim was for salary and allowances for the five years and nine months, prior to his being relieved, along with gratuity and pension. He also admitted that the salary, last drawn by him, was ₹ 4500/–, for April, 2000.

10. MW-1 Prabhakar Mahlan entered the witness box and proved his affidavit-in-evidence which was, accordingly, exhibited as Ex. MW-1/A. He also filed various documents, which were duly exhibited. Ex. RW-1/2 was the wage register of the respondent, for the month of May, 2000, indicating that the petitioner had been paid ₹ 4,275/–, as salary for the said month. Ex. RW-1/6 was a communication, dated 25th July, 2000, from the respondents to the petitioner, asserting that the petitioner had remained absent without leave, w.e.f. 11th May, 2000, and requiring the petitioner to furnish a medical certificate covering the period of his absence. Mark A was a document setting out the Constitution of the respondent. Mark C was the acceptance, by the petitioner, of the fact that he stood voluntarily retired, pursuant to the acceptance, by the respondent, of his request therefor. Mark D was the statement of account, of the petitioner, dated

27th September, 2001, which contained the details of the salary payable to him for the period April/May 2000 to September, 2001, and worked out to be ₹ 74,954/–.

11. MW-1 was also cross-examined, by the authorised representative of the petitioner. During cross examination, MW-1 asserted that the petitioner had not been terminated, but that he had taken voluntary retirement from the services of the respondent and that, thereafter, the respondent had written, to the petitioner, to visit his office and collect his full and final dues, but that he did not do so.

12. The impugned order, dated 30th August, 2014, having, as already noted hereinabove, delineated four issues as arising for consideration, chooses, however, only to examine issues (3) and (4) *supra*, and holds that, as the said issues were decided against the petitioner-workman, it was not necessary to examine issues (1) and (2).

13. In the opinion of this Court, the manner in which the Labour Court has proceeded is fallacious. When a preliminary objection, regarding the jurisdiction, of the Labour Court, to entertain, and adjudicate upon, the claim of the petitioner, had been raised by the respondent, and a specific issue, thereon, had been struck by the Labour Court, it was incumbent, on the Labour Court, to first address the issue, and record findings thereon. The competence and authority, of the Labour Court, to adjudicate on the merits of the claim of the petitioner, was entirely dependent on the Labour Court being

possessed of jurisdiction to do so. *Sans* jurisdiction, any exercise of adjudication, by the Labour Court, on the merits of the claim, stands reduced to a nullity.

14. Any examination of the merits, of the petitioners claim, would, therefore, necessarily require *a priori* confirmation of the respondent being an "industry", within the meaning of clause (j) of Section 2 of the ID Act, which defines "industry" in the following terms:

> "(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen;"

15. These proceedings gestate from the claim, submitted by the petitioner under Section 33C of the ID Act. In the opinion of this Court, therefore, before pronouncing on the merits of the petitioner's claim, or of the finding, of the Labour Court, thereon, this Court has, at the outset, to address the issue of whether the petitioner's claim, under Section 33C of the ID Act was, in the first place, maintainable at all. If the respondent was not an" industry", within the meaning of the ID Act, the dispute raised by the petitioner was not capable of being regarded as an "industrial dispute", as defined in clause (k) of Section 2 thereof; resultantly, the claim would be liable to be rejected on that sole ground, and there could be no question of proceeding to examine the merits of the claim.

16. The *situs* of the burden, regarding the issue of whether the establishment, in which the claimant, raising an industrial dispute,

works, is, or is not, an "industry", is no longer *res integra*. It stands authoritatively declared, in ***State of Gujarat v. Pratamsingh Narsinh Parmar, (2001) 9 SCC 713***, 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'." The said decision stands followed by this Court, *inter alia*, in ***Automobile Assoc. Upper India v. The P.O. Labour Court II, (2006) ILR 2 DELHI 90***.

17. In the present case, the respondent seriously contended that it was not an "industry", within the meaning of clause (j) in Section 2 of the ID Act. In its written statement, filed by way of response to the Statement of Claim of the petitioner, the respondent specifically contended thus:

> "The respondent, **Church of North India** is part of the 'One Holy, Catholic and Apostolic Church, the body of Christ. The object and purpose of the Church of North India, operating through Synod, Diocese and Pastorate is to proclaim by word and deed the gospel of Jesus Christ who is the Lord and Master of the Church, for the salvation and good of all mankind through unity, witness and service and through worship and other activities of the Church which promotes spiritual growth, self-reliance, social justice and moral regeneration.
>
> The organisation of the Church is on a territorial basis. The unit of such a territorial organisation is **Diocese** which is under the charge of the **Bishop**. It is the duty of every Diocese to spread the knowledge of the Gospel throughout its territory and to provide the spiritual needs of the members of the church.

The **Diocese of Delhi** is one of the Dioceses of CNI having its territorial area in Delhi for the purpose of attainment of the above object.

Diocese of Delhi manages its financial needs out of the contributions and offerings of the various churches within it territory. However these churches also thrive on the donations, offerings and voluntary contributions of its congregations.

The respondent craves leave to produce the Constitution of the respondent (in the book form) at the later stage to substantiate its above contentions as the same is not readily available.

Diocese of Delhi (CNI) is neither an Industry nor the claimant is a 'workman' under the Industrial Disputes Act, 1947 (as amended up-to-date).

Diocese of Delhi (CNI) is neither an industrial concern nor has any business and commercial activity to generate income and profit. It is an organisation in the service of God.

Therefore the present claim of the reply in its present form is not maintainable and is liable to be dismissed being barred under law and outside the statutory jurisdiction of this Hon'ble Court."

18. The respondent placed on record, before the Labour Court, the Constitution of the Diocese, which was marked "Mark 'A'", on 19th October, 2013. Sections I to III of Chapter III thereof, titled "Diocese", read thus:

"SECTION I. DIOCESE: ITS ORGANISATION

Clause I. The organisation of the Church is on a territorial basis.

The unit of such territorial organisation is the diocese. Each diocese is under the charge of a Bishop and functions through Diocesan Council, within the framework of the Constitution of the Church. Every Bishop **responsible for a Diocese** is the Bishop of a defined territory, has jurisdiction throughout the territory and no jurisdiction outside that territory.

Clause 2. It is the duty of every Diocese acting as a whole to spread the knowledge of the Gospel throughout its territory and to provide for the spiritual needs of the members of the Church who reside within it.

Clause 3. There should be no area in North India where members of the Church of North India are not under the jurisdiction of some Bishop of the Church.

SECTION II. OBJECTS AND PURPOSES OF THE DIOCESE

The Diocese shall fulfill the objects and purposes of the Church of North India i.e. to proclaim by word and deed the gospel of Jesus Christ, who is the Lord and Master of the Church for the salvation and good of all mankind through unity, witness, and service which may include educational, medical, social, agricultural and other services, and also through worship and other activities of the Church which promote spiritual growth, self-reliance, social justice and moral regeneration irrespective of caste, creed or colour.

SECTION III. DIOCESAN COUNCIL

The Diocesan Council shall have supervisory, legislative and executive powers over Pastorates within its jurisdiction and for the administration of its own affairs within the framework of the Constitution of the Church of North India.

The Diocesan Council shall be the ultimate financial authority of the Church in its Diocese in all matters concerning its internal administration.

SECTION IV. RELATIONSHIP OF THE DIOCESAN COUNCIL WITH THE SYNOD

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> Clause 5. While exercising autonomous powers and functions of administration within its territory, a Diocese is an integral part of the Church of North India of which the Synod is the supreme, supervisory, legislative and executive body and the final authority in all matters pertaining to the Church."

19. Section VII of the Constitution of the respondent deals with the duties of office-bearers of the Diocesan Counsel. Sub-Section B, therein, dealt with the Bishop, and enumerates, in its various Clauses, the duties of the Bishop. Of these, the following Clauses are relevant:

> "Clause 2. The Bishop has the general pastoral oversight of all members of the Church of North India in the area of the Diocese, and more particularly of the ministers of the Church. He/she is responsible for fostering true spiritual unity in the Diocese, and for entering as far as possible into pastoral relationship with the members of the flock especially by administering confirmation or any other right of admission to communicate membership of the Church of North India.
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> Clause 3. The Bishop shall promote evangelistic work in the Diocese, both by his/her own example and by encouragement given to others.
>
> Clause 4. The office of the Bishop is essentially a teaching office. He/she shall acquaint himself/herself with the various methods of worship and form of service in the Diocese and shall issue special services prayers for special occasions.
>
> Clause 5. He/she shall have authority, where there is a grave dissension with respect to any form of public worship, to forbid its continuance and any such provision shall remain in force pending any action that the Executive Committee of the Synod or the Synod itself may take thereon.
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> Clause 6. He/she shall accept candidates for ordination and ordained them on the recommendation of the Ministerial

> and Personal Committee, acting in accordance with the rules laid down by the Diocese and the Synod.
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> Clause 8. The Bishop Malone shall have authority in disciplinary cases to pronounce sentence of suspension from Holy Communion or exclusion from Communion, and to restore to the Fellowship of the Church those that are penitent. But she/she shall exercise his authority in accordance with the Rules and Discipline of the Church."

Sub-Section C, in Section VII, dealing with the Assistant Bishop, ordains thus:

> "Assistant Bishop is consecrated to the episcopacy of the whole Church. He/she is competent by virtue of his/her consecration to perform any spiritual acts, which belongs to the office of a Bishop."

20. Section IX of the Constitution of the respondent-Diocese deals with the powers and duties of the Diocesan Council which, according to Clause 10 thereunder, is "the ultimate financial authority of the Church in its Diocese in all matters concerning its internal administration". Clause 23 declares that "the moneys of the Diocesan Council shall consist of voluntary contributions, gifts, grants from the Synod, Trust Associations, Churches and Missionary Societies, and other organisations within the country or abroad and assessment from Pastorates or institutions, income from property is, endowments and other sources approved by the Diocesan Council or the Synod."

21. Can, in this backdrop, the respondent-Diocese be regarded as an "industry", within the meaning of Section 2(j) of the ID Act?

22. "Industry" is defined, in Section 2(j) of the ID Act 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".

23. The definitive *locus classicus*, which charts out the contours of the concept of "industry", as defined in the ID Act, continues to remain ***Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213***. The overarching scope of the concept of "industry", as conceptualised in the said pronouncement, is well known and, for the limited purposes of this judgment, it is not necessary to expound, in detail, with reference thereto. Suffice it to state that, even after providing, to the definition of "industry", such an expansive arena within which to peregrinate, Krishna Iyer, J., whose incisive exposition has immortalised the said judgment, stopped short, when it came to activities which were spiritual or religious in nature. A few observations, from the said decision, which underscore the point, may be reproduced thus:

> "**13.** … The expression "undertaking" cannot be torn off the words whose company it keeps. If birds of a feather flock together and *noscitur a sociis* is a commonsense guide to construction, "undertaking" must be read down to conform to the restrictive characteristic shared by the society of words before and after. Nobody will torture "undertaking" in Section 2(*j*) to mean meditation or *musheira which are spiritual and aesthetic undertakings*. Wide meanings must fall in line and discordance must be excluded from a sound system. From ***Banerji*** to ***Safdarjung*** and beyond, this limited criterion has passed muster and we see no reason, after all the marathon of argument, to shift from this position.
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37. The limiting role of ***Banerji*** must also be noticed so that a total view is gained. For instance, "analogous to trade or business" cuts down "under taking", a word of fantastic sweep. *Spiritual undertakings*, casual undertakings, domestic undertakings, war waging, policing, justicing, legislating, tax collecting *and the like are, prima facie, pushed out*. Wars are not merchantable, nor justice saleable, *nor divine grace marketable.* So, the problem shifts to what is "analogous to trade or business".

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110. *The heart of trade or business or analogous activity is organisation with an eye on competitive efficiency, by hiring employees, systematising processes, producing goods and services needed by the community and obtaining money's worth of work from employees*. If such be the nature of operations and employer-employee relations which make an enterprise an industry, the motivation of the employer in the final disposal of products or profits is immaterial. Indeed the activity is patterned on a commercial basis, judged by what other similar undertakings and commercial adventures do. To qualify for exemption from the definition of "industry" in a case where there are employers and employees and systematic activities and production of goods and services, we need a totally different orientation, organisation and method which will stamp on the enterprise the imprint of commerciality. Special emphasis, in such cases, must be placed on the central fact of employer-employee relations. *If a philanthropic devotion is the basis for the charitable foundation or establishment, the institution is headed by one who whole-heartedly dedicates himself for the mission and pursues it with passion, attracts others into the institution, not for wages but for sharing in the cause and its fulfilment, then the undertaking is not "industrial".* Not that the presence of charitable impulse extricates the institution from the definition in Section 2(j) but that *there is no economic relationship such as is found in trade or business between the head who employs and the others who emotively flock to render service. In one sense, there are no employers and employees but crusaders all.* In another sense, there is no wage basis for the employment but voluntary participation in the production, inspired by lofty ideals and unmindful of remuneration, service conditions and the like. *Supposing*

there is an Ashram or Order with a guru or other head. Let us further assume that there is a band of disciples, devotees or priestly subordinates in the Order, gathered together for prayers, ascetic practices, bhajans, meditation and worship. Supposing, further, that outsiders are also invited daily or occasionally, to share in the spiritual proceedings. And, let us assume that all the inmates of the Ashram and members of the Order, invitees, guests and other outside participants are fed, accommodated and looked after by the institution. In such a case, as often happens, the cooking and the cleaning, the bed-making and service, may often be done, at least substantially by the Ashramites themselves. They may chant in spiritual ecstasy even as material goods and services are made and served. They may affectionately look after the guests, and, all this they may do, not for wages but for the chance to propitiate the Master, work selflessly and acquire spiritual grace. It may well be that they may have surrendered their lucrative employment to come into the holy institution. It may also be that they take some small pocket money from the donations or takings of the institution. *Nay more; there may be a few scavengers and servants, a part-time auditor or accountant employed on wages. If the substantial number of participants in making available goods and services, if the substantive nature of the work, as distinguished from trivial items, is rendered by voluntary wage-less sishyas, it is impossible to designate the institution as an industry, notwithstanding a marginal few who are employed on a regular basis for hire. The reason is that in the crucial, substantial and substantive aspects of institutional life the nature of the relations between the participants is non-industrial.* Perhaps, when Mahatma Gandhi lived in Sabarmati, Aurobindo had his hallowed silence in Pondicherry, the inmates belonged to this chastened brand. Even now, in many foundations, centres, monasteries, *holy orders* and Ashrams in the East and in the West, spiritual fascination pulls men and women into the precincts and they work tirelessly for the Maharishi or Yogi or Swamiji and are not wage-earners in any sense of the term. Such people are not workmen and such institutions are not industries *despite some menials and some professionals in a vast complex being hired. We must look at the predominant character of the institution and the nature of the relations resulting in the production of goods and services. Stray wage-earning*

employees do not shape the soul of an institution into an industry.

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140. "Industry', as defined in Section 2(*j*) and explained in *Banerji*, has a wide import.

> "(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (*not spiritual or religious* but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale *prasad* or food), prima facie, there is an 'industry' in that enterprise.
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> (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
>
> (c) *The true focus is functional and the decisive test is the nature of the activity* with special emphasis on the employer-employee relations.
>
> (d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking."
>
> (Emphasis and underlining supplied)

The references, in the above extracted passages, to ***Banerji*** and ***Safdarjung***, it may be noted, are to the well-known precedents in ***D. N. Banerji v. P. R. Mukherjee, AIR 1953 SC 58*** and ***Safdarjung Hospital v. Kuldip Singh Sethi, (1970) 1 SCC 735***.

24. Concurring with the views expressed by Krishna Iyer, J., Beg, C.J. echoed the sentiment, thus:

> "**161.** *The test indicated above would necessarily exclude the type of services which are rendered purely for the satisfaction of spiritual or psychological urges of persons rendering those services. These cannot be bought or sold. For persons rendering such services there may be no "industry",* but, for persons who want to benefit from the services rendered, it could become an "industry".
>
> (Emphasis supplied)

25. It is important to note that the predominant nature of the activity carried out by the institution concerned, has necessarily to guide the decision as to whether the institution satisfies the test of an "industry", for the purposes of applicability of the ID Act, or not. As has been aptly noted, in the afore-extracted passages from ***Bangalore Water Supply (supra)***, the fact that, in order to function, the institution or undertaking concerned has to hire staff, or employees, would not, *ipso facto*, result in the institution metamorphosing into an "industry".

26. It may also be noted, in this context, that the ID Act does not conceive of any "industry", qua a particular workman, or group of workmen. An institution, or undertaking, is either an "industry", or it is not. If it is not an "industry", it does not become one, in relation to any particular person who may have been hired, for wages, by the institution, in order for the institution to run. To that extent, it is necessary to dichotomise the concepts of "industry" and "workman", as conceived by the ID Act. This distinction has essentially to be borne in mind, for the reason that, in modern times, institutions, or establishments ordinarily involve a multitude of operations. If, in a select few of such operations, or to discharge certain duties, which are

essentially tangential to the main purpose of the organisation, some persons had to be taken on hire, those persons cannot elevate themselves to the status of "workmen", competent to maintain a dispute under the ID Act; neither, conversely, would the institution be liable to be regarded as an "industry", qua the said employees. A simple example could be visualised, of a security guard hired to keep watch at the gates of a temple. The activity in the temple being essentially spiritual or religious in nature, it cannot be said that the temple is an "industry". It does not, therefore, become an industry even qua the security guard, who has been engaged on hire, to keep watch over the premises. The security guard cannot, therefore, maintain a dispute under the ID Act, claiming himself to be a "workman", merely because, between the temple and him, a commercial arrangement exists. Had he been performing the same duty in another, "industrial" organization, he might have been able to maintain such a dispute, and approach, for the resolution thereof, the Labour Court or Industrial Tribunal; as placed, however, he is proscribed from doing so, not because he is not a workman, engaged for wages, having a purely commercial relationship with the management of the temple, but because *the temple, which employs him, is not an "industry"*, within the meaning of the ID Act.

27. A Division Bench of this Court in ***Assem Abbas v. Rajghat Samadhi Committee, 2012 SCC OnLine Del 838*** has, after digesting several authorities on the includibility of religious and spiritual enterprises, within the ambit of the expression "industry", as contained in Section 2(j) of the ID Act, pronounced on the issue. The

controversy, in the said case, related to a security guard engaged by the Rajghat Samadhi Committee. Observing that the Rajghat Samadhi was "akin to a place of worship", this Court, speaking through A. K. Sikri, ACJ (as his Lordship then was) examined the authorities on the point of whether activities, which were religious or spiritual in nature, would attract Section 2(j) of the ID Act. From the judgments in ***Tirumala Tirupati Devasthanam v. Commissioner of Labour, (1979) I LLJ 448 AP***, ***Workmen employed in the Madras Pinjrapole v. Management of the Madras Pinjrapole, AIR 1963 MAD 89***, ***Shiromani Gurdwara Prabandhak Committee of Management Gurdwara Dhakhwaran Sahib v. Presiding Officer Labour Court, (2003) 135 PLR 462***, ***Harihar Bahinipaty v. State of Orissa, AIR 1966 ORI 35, K.C. Cherinjumpatty Thampuratty v. State of Kerala, 2004 (2) KLJ 398***, ***The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., AIR 1954 SC 282*** and, needless to say, ***Bangalore Water Supply (supra)***, this Court noted that (i) an institution, the main function of which was worship and facilitation of worship by pilgrims, would be essentially a religious institution and such an institution could not be regarded as an "industry", even if, for the convenience of the pilgrims, certain departments, in which persons were required to be taken on hire, had to be maintained, (ii) what was required to be seen was, therefore, the essential character of the institution, and (iii) in order to qualify as an "industry", within the meaning of Section 2(j) of the ID Act, an element of *res commercium* was essential, i.e., the institution had to be in the business of distribution of goods and services, or in activities analogous thereto.

Applying these tests, it was held that the Rajghat Samadhi, which was akin to religious or spiritual institutions discussed in the aforenoted decisions, could never have been considered to be an "industry", as conceptualised in Section 2(j) of the ID Act.

28. At this stage, it becomes necessary to refer to a decision of the High Court of Punjab and Haryana in ***Diocese of Amritsar of the Church of North India v. Buta Anayat Masih, 2009 SCC OnLine P&H 11598***, authored, sitting singly, by K. Kannan, J., especially as this decision directly dealt with an employee of a Diocese. The employee involved in the said case was employed as an Evangelist, with the Diocese, drawing a monthly salary of ₹ 2000/–. He, too, moved the Labour Court, challenging the termination, of his service, by the Diocese. Inevitably, a preliminary issue, as to whether the Diocese was, or was not, an "industry", for the purposes of the ID Act, fell for consideration. While expressing a lingering doubt as to whether, in every case, a Diocese would stand exempted from the ambit of the expression "industry", as defined in the ID Act, the High Court, nevertheless, held that "in (that) case, the activity in which the Diocese was engaged, the respondent was as an Evangelist." Following on this observation, the judgment went on to hold that, "if the case (was) put through acid test through the decision of the Hon'ble Supreme Court in ***Bangalore Water Supply and Sewerage Board v. A. Rajappa,*** it cannot survive *since the workman's activity is spiritual and religious.*" It is significant that the High Court did not except the dispute, initiated by the respondent-Evangelist, in that case, from the applicability of the ID Act, not because the respondent-

Evangelist was not a "workman", but because, by virtue of the nature of the activity performed by him, the petitioner-Diocese could not be regarded as an "industry", qua him.

29. With great respect, I am unable to concur with the approach adopted by the learned Single Judge of the High Court of Punjab and Haryana in ***Diocese of Amritsar (supra)***. According to me, the ID Act does not visualise individual activities, carried out in institutions or establishments, as being, or not being, industries. Neither does it envisage the aspect of whether an establishment was liable to be regarded as an "industry", qua a particular claimant-employee, as capable of being determined by referring to the *capacity in which that particular employee* was engaged by the organization. If such an approach were to be adopted, it appears to me that the situation would be jurisprudentially chaotic, as, in any given case, an institution would become liable to be regarded as an "industry", qua some of its employees, and not an "industry", qua others. The issue of whether the institution or establishment was, or was not, an "industry" would, then, pale into insignificance, as one would be concerned, not with the institution itself, but with that particular department in the institution, in which the employee was working, or the capacity in which the employee was employed by the institution. Such an employee-specific concept of "industry", in my view, was never intended by the ID Act. Besides, this would go against the very ethos of the observation, in ***Bangalore Water Supply (supra)*** and echoed, thereafter, in decision after decision, that, merely because an organisation, essentially engaged in religious or spiritual pursuits, had to employ, for wages,

one or more persons, the institution would not become an "industry", qua the said persons; neither would the said persons become "workmen", qua the institution. Of course, this would always remain subject to the employee/employees concerned establishing that they were "workmen", as defined in Section 2(s) of the ID Act.

30. While, therefore, the ultimate conclusion, arrived at by the High Court of Punjab and Haryana in ***Diocese of Amritsar (supra)*** was, in my view, correct, it was for a reason other than that adopted by the learned Single Judge in the said case. The respondent, before the High Court, could not be regarded as a workman employed in an "industry", not because he was employed as an Evangelist, *but because the Diocese was not an "industry"*.

31. I reiterate that these observations of mine are merely an expression of opinion, and are made with greatest respect to the learned author of the judgment in ***Diocese of Amritsar (supra)***, for whose legal learning and acumen I have, at all times, the highest respect and regard.

32. It is not necessary for me to pronounce, definitively, in the present case, on whether the respondent-Diocese was, or was not, and "industry". Suffice it to state that the paragraphs, extracted hereinbefore, from its Constitution, as filed and exhibited before the Labour Court, throw, into serious doubt, its liability to be regarded as one, within the meaning of Section 2(j) of the ID Act. *Prima facie*, the activities carried out by the Diocese are essentially ecclesiastical,

evangelical and spiritual in nature, and the Diocese itself, avowedly, was aimed at spreading the teachings of the Gospel and imbuing, in its followers and members, love and respect for Jesus Christ. This being the essential nature and character of the respondent-Diocese, it is questionable as to whether it could be regarded as an "industry". The duties performed by the Bishop, and the Assistant Bishop, who are, effectively, the apex functionaries in the Diocese, are essentially spiritual in nature. Clause 23 of Section IX of its Constitution establishes, further, that the moneys of the Diocese come from voluntary contributions, gifts, grants from the Synod, Trust Associations, Churches and Missionary Societies, as well as other organisations, from Pastorates and institutions, and income from properties, endowments and other sources, subject to the condition that any such source, from which income is to be derived, has to be approved by the Diocesan Council or the Synod. Clearly, therefore, no part of the income, forming the corpus of the Diocese, comes from any activity which could partake of the character of *res commercium*.

33. In such circumstances, the burden lay on the petitioner to establish, with positive material, the fact that the respondent was, in fact, an "industry", within the meaning of the ID Act. The affidavits in evidence, and oral deposition, of the petitioner, as WW-1, and the documents exhibited by the petitioner in support of his case, do not serve to discharge this onus, to any appreciable degree. That being so, it has necessarily to be held that the petitioner had failed to establish that the respondent was an "industry", so as to maintain the

proceedings, initiated by him, before the Labour Court, under the ID Act.

34. The preliminary issue, regarding the aspect of whether the respondent was an "industry", or not, being, therefore, answerable in favour of the respondent, the other issues, as framed by the Labour Court, do not survive for consideration. The proceedings initiated by the petitioner before the Labour Court, were, therefore, incompetent for want of jurisdiction and were, therefore, liable to be dismissed even on that score.

35. The final decision of the Industrial Tribunal, to reject the application of the petitioner, therefore, stands upheld, albeit for the reason that the petitioner had failed to discharge the burden to establish that the respondent-Diocese was an "industry", requiring the assertion, to the contrary, as advanced by the respondent-Diocese, meriting acceptance.

36. The writ petition is, consequently, dismissed.

37. It is clarified that this judgment does not pronounce on the merits of the petitioner's claim, as ventilated before the Labour Court.

38. There shall be no order as to costs.

C.HARI SHANKAR, J

SEPTEMBER 11, 2019
HJ