2026:CHC-AS:1142-D

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:
THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

W.P.A. 27842 of 2025

Armenian Holy Church of Nazareth
Vs.
Bijoy Biswas & Anr.

For the Petitioner	:	Mr. Soumya Majumder, ld. Sr. Adv. Ms. Sanjukta Dutta, Mr. Soumalya Karmakar.
For the Respondent No. 1	:	Mr. R. Guha Thakurta, Ms. S. Sengupta.
For the State	:	Mr. Santanu Kumar Mitra, Mr. Subhadip Biswas.
Judgment reserved on	:	07.07.2026
Judgment delivered on	:	29.07.2026

SHAMPA DUTT (PAUL), J.:-

1. The petitioner has preferred the writ application challenging the impugned award dated 11th June, 2025, passed by the Learned Fourth Industrial Tribunal, in Case No. VIII-08/2018.

2. It is the case of the petitioner that the respondent no. 1 was appointed in the Church on 31st July, 2003. The respondent no. 1 had been practicing various irregularities in the Church premises, and thus, on and from 3rd March, 2017 he was terminated from

service of the Church. The respondent no. 1 has received his wages in full till February 2017.

3. The Government of West Bengal made an order of reference on 26th April, 2018. The respondent no. 1 preferred an intra Court appeal from the said judgment and order dated 5th October, 2018, which was disposed of on 2nd September, 2024, directing the Industrial Tribunal to decide the question of maintainability of reference qua **the character of the Church as an industry,** as a preliminary issue.

4. The learned Tribunal on deciding the preliminary issue, thereafter proceeded to pass an award on 11th June, 2025 on merit.

5. It is the further case of the petitioner that the tribunal completely misdirected itself in arriving at the conclusion as regards the status of the Church qua an 'industry' within the meaning of Industrial Disputes Act, 1947, by failing to appreciate the very purpose for establishment of the Church and its related activities while deciding the order of reference.

6. It is the case of the petitioner that the petitioner church is run by the Armenian Church and propagates various religious activities for and on behalf of the Church.

7. The respondent no. 1 was appointed as a caretaker of St. Gregory's Chapel and for maintaining the cleanliness of the Church premises and also for preparation of the Chapel on Sundays for Church service, which is also inside the Church premises.

8. The affidavit in opposition has been filed by the respondent/employee denying the case of the petitioner.

9. The petitioner by way of a supplementary affidavit has annexed copies of evidence recorded before the tribunal in support of their case.

10. Written notes have been filed by the parties along with judgments relied upon.

11. It is the specific case of the private/respondent that Sir Catchick Paul Chater Home's systematic activity of providing services to its residents, is an industry and it employs workmen like him to give services to the residents there at including the St. Gregory's Chapel, which is part of the services offered at Sir Catchick Paul Chater Home.

12. It is further stated by the respondent/employee that he performed his duties under the instruction of his higher authorities and had no power of giving job requisitions, sanction leave, etc. and no employee worked under his supervision at that time of his appointment.

13. He was entitled to Basic Wages of Rs.2500/- with Dearness Allowance of Rs.1275/- per month and a Tiffin allowance of Rs.10/- per day. It is further stated by the respondent that since 2005, the Dearness Allowance component of his wages was unilaterally done away with and merged with Basic Wages and since then has been paid consolidated wages, whereafter the increments was arbitrary and very meagre in comparison with the high inflationary trend.

14. It is stated that all other workmen were given increment but the petitioner was not given any such increment and this prima facie shows the discrimination by the petitioner herein.

15. It is further stated by the respondent/employee that he was not given the benefit of the memorandum of settlement dated May 16, 2016 executed between the Union under reference and the writ petitioner herein.

16. The respondent states that his service was terminated by way of **refusal of an employment** on March 3, 2017. It is stated that without any show cause or charge sheet or the domestic enquiry and/or disciplinary proceeding the respondent/employee has been terminated by way of refusal of employment which is an illegal termination.

17. It is further stated that since March 3, 2017 the respondent/workman has remained unemployed.

18. In course of hearing both the parties have filed their respective written notes along with judgments relied upon.

19. The petitioner relies upon the judgment in ***Bangalore Water Supply and Sewerage Board v. A. Rajappa, reported at AIR 1978 SC 548*** *(paragraphs 71,140, 141, 160 & 161),* the Supreme Court held:-

> ***"71.*** *A conspectus of the clauses has induced Gajendragadkar, J. to take note of the impact of provisions regarding public utility service also: (SCR p. 875)*
> *"If the object and scope of the statute are considered there would be no difficulty in holding that the relevant words of wide import have been*

deliberately used by the legislature in defining 'industry' in Section 2(j). The object of the Act was to make provision for the investigation and settlement of industrial disputes, and the extent and scope of its provisions would be realised if we bear in mind the definition of 'industrial dispute' given by Section 2(k), of 'wages' by Section 2(rr), 'workman' by Section 2(s), and of 'employer' by Section 2(g). Besides, the definition of a public utility service prescribed by Section 1(m) is very significant. One has merely to glance at the six categories of public utility service mentioned by Section 2(m) to realise that the rule of construction on which the appellant relies is inapplicable in interpreting the definition prescribed by Section 2(j).

The positive delineation of "industry" is set in these terms: (SCR p. 879)

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

Again, (SCR p. 878)

"It is the character of the activity which decides the question as to whether the activity in question

attracts the provision of Section 2(7); who conducts the activity and whether it is conducted for profit or not do not make a material difference."

By these tests even a free or charitable hospital is an industry. That the Court intended such a conclusion is evident: (SCR p. 878)

"If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under Section 1(j). Thus the character of the activity involved in running a hospital brings the institution of the hospital within Section 2(j)."

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.

(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."

II

141. *Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.*

"(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I, although not trade or business, may still be 'industry' provided the nature of the activity, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of '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 organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy."

III

160. *I think the phrase 'analogous to industry', which has been used in the Safdarjung Hospital case could not really cut down the scope of "industry". The result, however, of that decision has been that the scope has been cut down. I, therefore, completely agree with my learned Brother that the decisions of this Court in Safdarjung Hospital case and other cases mentioned by my learned Brother must be held to be overruled. It seems to me that the term "analogous to trade or business" could reasonably mean only activity which results in goods made or manufactured or services rendered which are capable of being converted into saleable ones. They must be capable of entering the world of "res commercium" although they may be kept out of the market for some reason. It is not the motive of an activity in making goods or rendering a service, but the possibility of making them marketable if one who makes goods or renders services so desires, that should determine whether the activity lies within the domain or circle of industry. But, even this may not be always a satisfactory test.*

> ***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". When services are rendered by groups of charitable individuals to themselves or others out of missionary zeal and purely charitable motives, there would hardly be any need to invoke the provisions of the Industrial Disputes Act to protect them. Such is not the type of persons who will raise such a dispute as workmen or employees whatever they may be doing."*

20. **Mr. Majumder, learned Senior Counsel** appearing for the petitioner has argued that vide the impugned award **the tribunal** has held the **private respondent to be a "workman" of the Church, by reckoning the Church to be an "industry" within the meaning of the I. D. Act. 1947.**

21. Sec. 2 (j) of the I.D. Act which defines "industry" is placed and is as follows:-

> ***"Section 2(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";*

22. It is further argued by **Mr. Majumder** that the appointment Letter of the private respondent shows that he was appointed by the Church. **No activity of a Church can be said to be falling within the definition of "industry". A service to the God and for spiritual/religious purpose cannot certainly be said to be a**

service rendered by an employer and workmen. The service is not for industrial purpose.

23. Reference with regard to the nature of activity of an "industry" is made to the judgment in ***Bangalore Water Supply (supra),*** on the anvil of the object of the Act being settlement of industrial disputes.

24. It is stated that the rendering of service by the Church to the people, does not make the service marketable. Similarly rendering domestic service in a residence is also not service to any "industry". **Actual function assumed by the body must be "analogous to the carrying out of a trade or business"** for constituting an **"industry".** An activity involving co-operation of employer and employees with the object of satisfying "material" human needs in an organised manner, will be industry. **The character of activity of Church does not satisfy "material" human needs. It is a religious service to human's spiritual wishes.**

25. It is further argued by **Mr. Majumder,** that the Learned Tribunal also proceeded on the basis that the form of settlement and sending copies of settlement to authorities of the Government would render the Church to be an "industry".

26. It is thus stated that the said findings of the tribunal is not in accordance with law. In view of the facts that:-

i) Form test cannot override substance test.

ii) If the activity is not "industry" then there can be no scope of coming within the mischief of the law governing "industry".

iii) There can be no estoppel against statute or law.

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iv) Just as parties cannot contract to go out of statute, they cannot also contract to come within statue, so as to clothe an authority with jurisdiction which it does not process, over a subject matter.

27. The petitioner has thus, prayed for setting aside of the impugned award by also filing written notes.

28. **The State/respondent on filing written notes** in the present case argued that the termination of the respondent/workman was done in utter violation of law and no proper notice or compensation was ever paid to the workman. The State/respondent to counter the argument of the petitioner herein that Church is not "An Industry" has placed Clause VIII of the appointment letter dated 31st July, 2003 issued to the respondents/workman. Clause VIII is as follows:-

> ***"Clause. Viii.*** *In case your services are not found satisfactory by the management, your employment may be terminated without any reason whatsoever by giving one month notice in writing or by paying one month salary in lieu thereof. Similarly should you decide to resign from the service of the church you shall have to give one month notice in writing or pay the equivalent one month salary in lieu thereof."*

29. It is further stated by the State/respondent in their written notes that in consonance with the said condition of service as per the aforesaid appointment letter, subsequently a bipartite settlement

had been entered into between the petitioner and the respondent No.1 and the respondent No.1 established the fact that the dispute arising out of employment of worker being the workman Bijoy Biswas, the respondent No.1 herein shall be dealt with the provisional Industrial Dispute Act, 1947.

30. It was settled by and between the said parties under the said Memorandum of Settlement that in addition to some allowances and uniform and advance loan, the workman shall be paid gratuity in accordance with the Payment of Gratuity Act, 1972 and the workman will get leave in accordance with the provisions of West Bengal Shop and Establishment Act. More over from the impugned award, it appears that there is no gross denial about the relationship between the parties as employer and employee.

31. The learned tribunal has also relied upon the judgment in ***Bangalore Water Supply (supra)*** wherein the Hon'ble Apex Court held that there is triple test to identify an Industry and the triple test are **(i) Systematic Activity (ii) Co-operation between employer and employees and (iii) <u>Production and/or distribution of goods</u> and services calculated to satisfy human wants and wishes. (not spiritual or religious but inclusive of material things or services geared to celestial bliss, prima facie, there is an industry in the enterprise).**

32. **The State** has further supported the case of the respondent/workman by stating that the learned tribunal rightly considered the characteristic and activities and the relationship

between the parties as employer and employee and also that perquisite/bona fide obligation and other conditions of service were determined from time to time by the subsequent bipartite settlement and also the appointment letter which makes it mandatory by the provision of Section 25(f) of the Industrial Disputes Act 1947 mandatory in the present case. It is further submitted that the parameter for classification of "industry" by the Hon'ble Supreme Court between the employer and employee is well established in the present case and the findings of the learned tribunal being in accordance with law should not be interfered with.

33. The State/respondent submits that the entire issue can be laid to rest by directing the **respondent trust** to pay a lumpsum compensation of Rs.12,00,000/- since the appellant had worked for 12 years in the said trust continuously, uninterruptedly and without any blemish. The judgment of the Supreme Court in ***Indravadan N. Adhvaryu Pipala Fali Modhvada vs Laxminarayan Dev Trust, in Civil Appeal No. 7549 of 2011, decided on 29th January, 2026,*** is relied upon.

34. In ***Bangalore Water Supply & Sewerage Board vs A. Rajappa and Ors.(Supra),*** the Hon'ble Five Judge Bench of the Supreme Court also held:-

> *"…….. (b) Absence of profit motive of 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 organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking. (Para 140)
(2) Although the sub-section uses the words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.
(a) 'Undertaking' must have a contextual and associated meaning as explained in Banerji's case; so also service, calling and the like. Hence all organised activity possessing the triple elements of systematic activity, organised cooperation between employer and employee and production and distribution of goods and services calculated to satisfy human wants and wishes, although not trade or business, may still be industry provided the nature of the activity, namely, the employer-employee basis bears resemblance to what is found in trade or business. This takes into the fold of industry, under-takings, callings, services, and adventures "analogous to the carrying on of trade or business". All features other than the methodology of carrying on the activity, namely, in organising the cooperation between employer-employee may be dissimilar but it does not matter if on the employment terms there is analogy. (Para 141)
(3) The ideology of the Act being industrial peace, regulation and reso-lution of industrial disputes between the employer and workmen the range of this statutory ideology must inform the reach of statutory definition and taken to the logical conclusion without any pre-conceived notions.
(a) The consequences are (i) professions, (ii) clubs, (iii) educational institutions, (iv) co-operatives, (v) research institutes, (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests, 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 laboratories 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,
(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 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 eleemosynary or like undertakings alone are exempted - not other generosity, compassion, developmental passion or project. (Para 142)

(4) (a) Where a complex of activities some of which qualify for exemption and others not, involves employees on the total undertaking, some of whom are not workmen as in the University of Delhi case 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 as explained in the Corporation of Nagpur case 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) 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 then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby. (Para 143)

107. *The second species of charity is really an allotropic modification of the first. If a kind-hearted businessman or high-minded industrialist or service-minded operator hires employees like his non-philanthropic counterparts and, in cooperation with them, produces and supplies goods or services to the lowly and the lost, the needy and the ailing without charging them any price or receiving a negligible return, people regard him as of charitable disposition and his enterprise as a charity. But then, so far as the workmen are concerned, it boots little whether he makes available the products free to the poor. They contribute labour in return for wages and conditions of*

service. For them the charitable employer is exactly like a commercial-minded employer. Both exact hard work, both pay similar wages, both treat them as human machine cogs and nothing more. The material difference between the commercial and the compassionate employers is not with reference to the workmen but with reference to the recipients of goods and services. Charity operates not vis-à-vis the workmen in which case they will be paying a liberal wage and generous extras with no prospect of strike. The beneficiaries of the employer's charity are the indigent consumers. Industrial law does not take note of such extraneous factors but regulates industrial relations between employers and employers, employers and workmen and workmen and workmen. From the point of view of the workmen there is no charity. For him charity must begin at home. From these strands of thought flows the conclusion that the second group may legitimately and legally be described as industry. The fallacy in the contrary contention lies in shifting the focus from the worker and the industrial activity to the disposal of the end product. This law has nothing to do with that. The income tax law may have, social opinion may have.

109. *We now move on to economic activities and occupations of an altruistic character falling under the third category.*

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.

142. *Application 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 off this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.*

"(a) The consequences are (i) professions, (ii) clubs, (iii) educational institutions, (iv) co-operatives, (v) research institutes, (vi) charitable projects, and (vii) other kindred adventures, if they fulfil the triple tests listed in I, 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 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.

(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 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 eleemosynary or like undertakings alone are exempt — not other generosity, compassion, developmental passion or project."

IV

145. *We conclude with diffidence because Parliament, which has the commitment to the political nation to legislate promptly in vital areas like Industry and Trade and articulate the welfare expectations in the "conscience" portion of the Constitution, has hardly intervened to re-structure the rather clumsy, vapourous and tall-and-dwarf definition or tidy up the scheme although judicial thesis and anti-thesis, disclosed in the two-decades-long decisions, should have produced a legislative synthesis becoming of a welfare state and socialistic society, in a world setting where ILO norms are advancing and India needs updating. We feel confident, in another sense, since Counsel stated at the bar that a bill on the subject is in the offing. The rule of law, we are sure, will run with the rule of life — Indian life — at the threshold of the decade of new development in which labour and management, guided by the State, will constructively partner the better production and fair diffusion of national wealth. We have stated that, save the Bangalore Water Supply and Sewerage Board appeal, we are not disposing of the others on the merits. We dismiss that appeal with costs and direct that all the others be posted before a smaller Bench for disposal on the merits in accordance with the principles of law herein laid down.*

160. *I think the phrase 'analogous to industry', which has been used in the Safdarjung Hospital case could not really cut down the scope of "industry". The result, however, of that decision has been that the scope has been cut down. I, therefore, completely agree with my learned Brother that the decisions of this Court in Safdarjung Hospital case and other cases mentioned by my learned Brother must be held to be overruled. It seems to me that the term "analogous to trade or business" could reasonably mean only activity which results in goods made or manufactured or services rendered which are capable of being converted into saleable ones. They must be capable of entering the world of "res commercium" although they may be kept out of the market for some reason. It is not the motive of an activity in making goods or rendering a service, but the possibility of making them marketable*

if one who makes goods or renders services so desires, that should determine whether the activity lies within the domain or circle of industry. But, even this may not be always a satisfactory test.

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". When services are rendered by groups of charitable individuals to themselves or others out of missionary zeal and purely charitable motives, there would hardly be any need to invoke the provisions of the Industrial Disputes Act to protect them. Such is not the type of persons who will raise such a dispute as workmen or employees whatever they may be doing."*

35. **Mr. Guha Thakurta** appearing for the respondent no. 1/workmen has relied upon ***The K.C.P. Employees' Association, Madras vs The Management of K.C.P. Ltd. Madras & Ors., January 24, 1978.*** The said judgment does not apply to the present case, as the company there in was *"a public limited company, carries on three business adventure……"*

36. The respondent/workman was appointed on 31.07.2003, as a caretaker with terms and conditions and nature of duties, emoluments etc. in the appointment letter.

37. The memorandum of settlement between the Church and the Union, provides the term and condition of the settlement which includes leaves, a copy of which was also sent to the Labour Commissioner, West Bengal and also the Labour Secretary.

38. The respondent/workman states that since 03 March, 2017, 1 P.M., he has allegedly not been permitted to enter the work place.

39. Finally the Govt. of West Bengal made a reference on 26.04.2018 to the industrial tribunal on the recital that an industrial dispute existed between the petitioner and the workman/Union an the following issues:-

"ISSUE(S)

1. Whether the termination of service of Sri Bijoy Biswas, the workman, by way of refusal of employment w.e.f. 03.03.2017 by the Armenian Holy Church of Nazareth is justified?

2. What relief, if any, the workman is entitled to?"

40. The petitioner/Church filed written statement on grounds, some of which are as follows:-

*"**Part-I***

4. The Church submits that the Reference is not maintainable since Armenian Holy Church of Nazareth is not an 'industry' as contemplated in Section 2(j) of the Industrial Disputes Act, 1947.

6. The Church submits that the Reference is not maintainable since the union under reference has got no locus-standi and/or representative character to espouse the cause of the concerned person.

7. The Church submits that the Reference is not maintainable since Sri Bijoy Biswas is not a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

Part-II

12. .....

a. Armenian Holy Church of Nazareth is a spiritual institution. The church has a home known as Sir Cathick Paul Chater Home. The said home is an accommodation for the economically distressed Armenians; particularly the aged ones and it forms part of Philanthropic and Religious duties of the church. It is not open to general public. Unlike other homes no donation fees etc. is charged. The home is principally to provide permanent shelter/accommodation for the aged / distressed Armenians in Kolkata.

b. The activities of the church are spiritual in nature and Church manages home for the distressed Armenians. The home was founded by the church to prevent human suffering and to extend necessary relief to the needy towards the distressed Armenians. The object and purpose of forming the home is evangelical being corner stone of the church's religious endowment.

c. The activities of the church are not a systematic activity carried on with the co-operations of personnel "for the production of supply of distribution of goods or services with a view to satisfy human ones and wishes".

d. The church carries its activities primarily from the funds received through contributions, donations, endowment received from various churches, missions and/or philanthropic organisations.

f. In order to fulfil the needs of the aged or ailing humanity with devotion to duty the Home was established to serve the ailing humanity with utmost care. There was no profit motive. It is only to provide aid or help to the distressed Armenians in Kolkata.

i. Sri Bijoy Biswas was in the habit of committing all sorts of irregularities and violated the disciplines, rules and regulations of the Church. Adequate and reasonable opportunities were afforded to him before affecting termination. Moreover the investigations were carried out for the misdemeanour made by him. For the misconducts committed by him he was warned several times but it has not yielded any result. There was complete ignorance of instructions and warnings and indeed those were open defiance of Authority. The gravity of the misconducts and the gravity of the activities of the Church as well as his arrogance prompted the management to take measure as his presence is detrimental to the Church."

41. Vide an order dated 05.10.2018, the High Court in WP 15306(W) of 2018, set aside the said order of reference dated 26th April, 2018, the Court held:-

"..... has impugned order dated 26th April, 2018 of reference to Seventh Industrial Tribunal, issues as under :-

"1. Whether the termination of service of Sri Bijoy Biswas, the workman, by way of refusal of

employment w.e.f. 03.03.2017 by the Armenian Holy Church of Nazareth is justified?

2. What relief, if any, the workman is entitled to ?"

Mr. Majumdar, learned advocate appears on behalf of petitioners and submits, in conciliation his clients contended there could not be an industrial dispute between Church and its employee. He relies on judgment of Supreme Court in ***Bangalore Water Supply vs. A. Rajappa*** *reported in* ***AIR 1978 SC 548*** *to, inter alia, paragraph 59. He submits, Supreme Court relied on its earlier declaration to say `industry' will cover 'branches of work that can be said to be analogous to the carrying out of a trade or business'. He submits, a Church and its activities cannot be said to be Industrial activity. There, thus, cannot be industrial dispute. He seeks intervention. Mr. Guha Thakurta, learned advocate appears on behalf of private respondent and submits, whether the Church in running a home where his client found employment was thereby doing industrial activity can be a matter incidental to issues referred. He submits, there should not be interference.*

In ***Bangalore Water Supply*** *(supra) Supreme Court through several learned Judges in the Bench said as it did regarding coverage by word, 'Industry'. Appropriate Government did not refer existence of industrial dispute also as an issue. It has referred issues, which presume industrial dispute to exist, petitioners' contention being it is not an Industry. Private respondent could not show any declaration of law to resist Intervention sought.*

Impugned order is set aside for above reasons……"

42. In appeal FMA 145 of 2020, the Court directed as follows:-

> ***"6.*** *Having heard Mr. Bikash Ranjan Bhattacharyya, learned senior advocate for the appellant and Mr. Soumya Majumder, learned advocate for the respondents, this Court is of the view that as to whether the Armenian Holy Church of Nazareth, respondent. herein, is an industry or not within the meaning of the Industrial Disputes Act must be framed as a preliminary issue and decided first by the tribunal. Sufficient time must thereafter be allowed to the parties before entering into the other issues."*

43. To substantiate the case of the respondent no. 1 that the petitioner comes with the term 'industry', the union has stated in their written statement as follows:-

> ***"4.*** *I say that I was appointed by the Employer as Caretaker of St. Gregory's Chapel at 418. North Range, Calcutta - 700017 which is under the control of the Employer on August 07, 2003 and is part of Sir Catchick Paul Chater Home, which runs on the entire Chater Home including the St. Gregory's Chapel from the endowments of Sir Catchick Paul, which is invested in various securities.*
>
> ***5.*** *I say that Sir Catchick Paul Chater Home runs a systematic activity of providing services to its residents and is an industry and it employs workmen like me to give services to the residents thereat including the St. Gregory's Chapel, which is part of the services offered at Sir Catchick Paul Chater Home."*

44. On stating the same, the respondent no. 1 has proceeded to claim illegal termination by way of refusal of employment.

45. The relevant extract of the cross examination of workman are stated herein:-

> ***"..... It is true that the OP/Church is involved in various types of voluntary services to the society.***
>
> *There is a Nurse working to look after the inmates of the Home under the management of the Church.*
>
> *Out of such inmates in the Home some of them who are physically abled used to cook their own food.*
>
> ***The inmates who are physically disabled used to get a huge amount of stipend and yearly bonus as provided by the Church.***
>
> *There is a Doctor used to visit the inmates of the Home and other Armenian twice in a week.*
>
> *The Church used to bear all such cost towards medical treatment of those inmates of the Home and Armenians.*
>
> *The Church also bears the expenses towards education of the children of the poor Armenians.*
>
> ***Personally I did not see that the OP/Church is involved in any type of trading or business.***
>
> *There are 18 (eighteen) rooms situated at the aforesaid Home for patients.*
>
> ***I know that from any corner Church is getting any financial or any other aid.***
>
> ***I know that this OP Church is a non profit institute.***
>
> ***I cannot show any document to establish that the OP Church is involved in any type of trade or industrial activities....."***

46. The petitioner's case is that:-

> *"5. ..... the church are not a systematic activity carried on with the co-operations of personnel "for the*

production of supply of distribution of goods or services with a view to satisfy human ones and wishes".

6. …….. the church carries its activities primarily from the funds received through contributions, donations, endowment received from various churches, missions and/or philanthropic organisations.

7. I say that the church is not a factory nor an establishment such as industrial, commercial, agricultural or otherwise. In order to fulfil the needs of the aged or ailing humanity with devotion to duty the Home was established to serve the ailing humanity with utmost care. There is no profit motive. It is only to provide aid or help to the distressed Armenians in Kolkata.

8. I say that the inmates of the home of the Church are needy and distressed persons. The inmates who are not able to cook their own food they are given financial assistance by the Church to buy their foods from outside. The Church provides them primary medical facilities and the money are given by the Church to buy their medicine also from outside medicine shops.

9. I say that the Church Authority sponsors educational facilities to the Armenian students."

47. It is thus the case of the petitioner that they not being an 'industry', the workman herein cannot invoke the provisions of the Industrial Dispute Act.

48. The tribunal's finding that the petitioner is an "industry" is on the following observations:-

"……. So, having considered the above discussed facts and circumstances coupled with the evidence on record, I find it is very convincing argument before me

that had there been no relation by and between the parties as Employer and Workman and had there been no existence of any registered/affiliated trade union then certainly the aforesaid bipartite settlement ought not arrived at in between the Employer and the Trade Union by way of said 'Memorandum of Settlement' containing the conditions of service in consonance with the practice and procedure as well as the rules and regulations of Industrial Disputes Act, particularly in keeping the clause of forwarding copies of the 'Memorandum of Settlement' to those authorities of Labour Department of West Bengal in terms of the Rules and Regulations of Industrial Disputes Act, 1947. May be the nature of the activity of the OP/Employer was charity and has no profit motive having no trading or business but the fact remain that the concerned workman used to work there because of he was paid wages for his service but not because of his passion of voluntary service for charity. So, in presence of such direct evidence of nature, activity and relation between the parties and also maintaining expressed conditions of service in those documents i.e., Exhibit-1 (Exhibit-A) & Exhibit-2 in consonance with the rules and regulation of relevant Industrial Dispute Act, 1947, I am of the considered view that without critical analysis of the above referred decisions as relied upon by the Ld. Counsel of the OP/Employer undoubtedly it can be held that this case is maintainable treating the disputes between the parties as Industrial Disputes to be dealt with the provision of Industrial Disputes Act……"

49. The tribunal then proceeds to decide as to the issue of termination of the workman.

50. Now it is to be seen as to whether the learned tribunal rightly decided the preliminary issue that the petitioner herein falls within the definition of 'industry' under the Industrial Dispute Act.

51. The tribunal while deciding the said issue on which the whole case rests, held:-

> ***".....May be the nature of the activity of the OP/Employer was charity and has no profit motive having no trading or business*** *but the fact remain that the concerned workman used to work there because he was paid wages for his service* ***but not because of his passion of voluntary service for charity.....".***

52. In ***Lawrence Messy vs Diocese of Delhi, AIRONLINE 2019 DEL 1526, decided on 11 September, 2019,*** the Delhi High Court held:-

> ***"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:*
>
> .....
>
> *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.

(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.

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."

53. In ***The Corporation of The City of Nagpur vs Its Employees, AIR 1960 SC 675, decided on 14 December, 1959,*** the Supreme Court has exhaustively discussed and decided the issue as follows:-

"5. The first question need not detain us, for it has now been finally decided by two decisions of this Court against the appellant. In D. N. Banerji v. P. K. Mukherjee ([1953] S.C.R. 302), the chairman of a municipality dismissed two of its employees, namely, the Sanitary Inspector and the Head Clerk, and the Municipal Workers' Union Questioned the propriety of the dismissal and claimed that they should be re-instated and the matter was referred by the Government to the Industrial Tribunal for adjudication under the Industrial Disputes Act. In that case two questions were raised before this Court - one was whether the said dispute was industrial dispute within the meaning of s. 2(j) of the Industrial Disputes Act and the other was whether the Industrial Disputes Act was invalid inasmuch as it allowed the Tribunal to re-instate employees and to that extent trenched on the power of the chairman to

appoint and dismiss employees. This Court held that the Act was not invalid, as it was in pith and substance a law in respect of industrial and labour disputes and that the conservancy service rendered by the municipality was an industry and the dispute between the municipality and the employees of the conservancy department was an industrial dispute within the meaning of the Industrial Disputes Act. This decision was followed by this Court in Baroda Borough Municipality v. Its Workmen ([1957] S.C.R. 33). In that case the effect of the earlier decision was summarized thus, at p. 38 :

"It is now finally settled by the decision of this Court in D. N. Banerji v. P. K. Mukherjee ([1953] S.C.R. 302) that a municipal undertaking of the nature we have under consideration here is an "industry" within the meaning of the definition of that word in s. 2(j) of the Industrial Disputes Act, 1947, and that the expression "industrial dispute" in that Act includes disputes between municipalities and their employees in branches of work that can be regarded as analogous to the carrying on of a trade or business."

6. In that case the workmen employed in the electricity department of the Baroda Municipality demanded bonus. The electricity undertaking of the Baroda municipality was held to be an industry and the dispute between the Municipality and its employees an industrial dispute. Bonus was refused on other grounds and we are not concerned with that aspect of the case here. ***These two cases, therefore, have finally and authoritatively held that municipal undertakings could be "industry" within the meaning of the Industrial Disputes Act.***

7. A faint argument is attempted to sustain a distinction between the definition of an "industry" in the Industrial Disputes Act and the definition of the same word in the Act in question. Section 2(j) of the Industrial Disputes Act "industry" to mean any business trade, undertaking, manufacture or calling of employers and to include any calling, service, employment, handicraft, or industrial occupation or avocation of workmen". Section 2(14) of the Act divides the definition into three parts, namely, "(a) any business, trade, manufacturing or mining

undertaking or calling of employers, (b) any calling, service, employment, handicraft or industrial occupation or avocation of employees, and (c) any branch of an industry or a group of industries." A comparative study of these two sections brings out the following differences : While the definition of "industry" in the Industrial Disputes Act means certain things and includes others, the definition of "industry" in the Act includes the three categories described therein; while the definition in the former Act places 'undertaking ' in a category different from 'manufacturing or mining', in the latter Act it is qualified by the words 'manufacturing or mining'. In our view these differences do not justify us in taking a different view from that accepted by this Court in the foregoing decisions. Clause (a) of the definition defines industry with reference to the employers and clause (b) with reference to the employees. Excluding the words "manufacturing or mining undertaking" from clause (a) of the definition, the other words in cls. (a) and (b) thereof are comprehensive enough to take in all the categories which the definition of "industry" in the Industrial Disputes Act will take in. That apart, a perusal of the decision of this Court in D. N. Banerji v. P. R. Mukherjee ([1953] S.C.R. 302) does not indicate that this Court would have come to a different conclusion if the word "undertaking" in the Industrial Disputes Act was qualified by the words "manufacturing or mining". The decision was founded on a broader basis, having regard to the history of the legislation, the cognate definitions in the Act and the inclusive part of the definition corresponding to s. 2(14)(b) of the Act. We, therefore, hold that a service rendered by a corporation, if it complies with the conditions implicit in the definition - which we would consider at a later stage of the judgment - will be an "industry" within the meaning of the definitions in the Act.

8. The next question is whether activity of the Corporation is not "industry" unless it shares the common characteristics of an industry. ***The following five characteristics are stated to be the conditions implicit in the definition : (i) the activity must concern the production or distribution of goods or services; (ii) it must be to serve others but not to oneself; (iii) it must involve co-operative effort between employer and employee, between capital and labour; (iv) it***

must be done as a commercial transaction; and (v) it must not be in exercise of purely governmental functions.

9. We have considered this aspect in State of Bombay v. The Hospital Mazdoor Sabha in the context of the definition of "industry" in the Industrial Disputes Act and formulated certain broad principles. But as this case is concerned with the definition of "industry" in a different Act, we shall briefly resurvey the law on the subject with specific reference to a corporation.

10. Let us scrutinize the definition of "industry" to ascertain whether all or some of the conditions are implicit in the definition and whether the said conditions constitute the necessary basis for it. The true meaning of the section must be gathered from the expressed intention of the Legislature. Maxwell in his book "On the interpretation of Statutes", 10th Edn., rightly points out at p.2 that "if the words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature". The words used in the section are clear and unambiguous and they prima facie are of the widest import. We have pointed out that the section is in two parts : clause (a) defines "industry" with reference to employers and clause (b) defines it with reference to employees. Clause (c) extends the definition to any branch of an industry or a group of industries, i.e., industries coming within the definition of cls. (a) and (b). It is said that in construing the definition we must adopt the rule of construction noscuntur a sociis. Maxwell explains this doctrine at p. 332 thus :

"when two or more words which are susceptible of analogous meaning are coupled together noscuntur a sociis. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general."

11. On the basis of this doctrine, it is argued that the words following the words "any business, trade, manufacturing or mining undertaking" shall partake the characteristics of any business, trade, manufacturing or mining undertaking, and the words "any calling,

service, employment, handicraft or industrial occupation or avocation of employees" shall share the qualities of an industrial occupation or avocation. In other words, the general word "calling" in clause (a) is controlled by the words preceding it, and the general words "calling, service etc." in clause (b) are restricted by the succeeding words "industrial occupation or avocation". This doctrine was dealt with by this Court in State of Bombay v. The Hospital Mazdoor sabha. Therein this Court has considered the scope of this doctrine and has observed thus:

"It must be borne in mind that noscuntur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but where the object of the Legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service."

12. The said doctrine, therefore, cannot be invoked in cases where the intention of the Legislature is clear and free of ambiguity. The phraseology used in the section is very clear and it is not susceptible of any ambiguity. The words used in the first part of clause (b) are unqualified; and the qualification is introduced only in the later part. If the words "calling, service, employment, handicraft" are really intended to be qualified by the adjective "industrial", one should expect the legislature to affix the adjective to the first word "calling" rather than to the last word "occupation". The inclusive definition is a well recognized device to enlarge the meaning of the word defined, and, therefore, the word "industry" must be construed as comprehending not only such things as it signifies according to its natural

import but also those things the definition declares that it should include : see Stroud's Judicial Dictionary, Vol. 2, p. 1416. So construed, every calling, service, employment of an employee or any business, trade or calling of an employer will be an industry. *But such a wide meaning appears to overreach the objects for which the Act was passed. It is, therefore, necessary to limit its scope on permissible grounds, having regard to the aim, scope and the object of the whole Act. To arrive at the real meaning of the words, Lord Coke in Heydon's case ([1584] 3 Rep. 7 b) says that the following matters are to be considered: (1) What was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) What remedy Parliament has appointed; and (4) The reason of the remedy. The word "employers" in clause (a) and the word "employees" in clause (b) indicate that the fundamental basis for the application of the definition is the existence of that relationship. The cognate definitions of "industrial dispute", "employer", "employee", also support it. The long title of the Act as well as its preamble show that the Act was passed to make provision for the promotion of industries and peaceful and amicable settlement of disputes between employers and employees in an organized activity by conciliation and arbitration and for certain other purposes. If the preamble is read for certain other purposes. If the preamble is read with the historical background for the passing of the Act, it is manifest that the Act was introduced as an important step in achieving social justice. The Act seeks to ameliorate the service conditions of the workers, to provide a machinery for resolving their conflicts and to encourage co-operative effort in the service of the community. The history of labour legislation both in England and India also shows that it was aimed more to ameliorate the conditions of service of the labour in organized activities than to anything else. The Act was not intended to reach the personal services which do not depend upon the employment of a labour force.*

13. Before considering the positive aspects of the definition, what is not an industry may be considered. However wide the definition of "industry" may be, it cannot include the regal or sovereign functions of state. This is the agreed basis of the arguments at the Bar, though the learned counsel

differed on the ambit of such functions. While the learned counsel for the Corporation would like to enlarge the scope of these functions so as to comprehend all the welfare activities of a modern State, the learned counsel for the respondents would seek to confine them to what are aptly termed "the primary and inalienable functions of a constitutional government". It is said that in a modern State the sovereign power extents to all the statutory functions of the State except to the business of trading and industrial transactions undertaken by in its quasi-private personality. Sustenance for this contention is sought to be drawn from Holland's Jurisprudence, wherein the learned author divides the general heading "public Law" into four sub-heads and under the sub-head "Administrative Law" he deals with a variety of topics including welfare and social activities of a State. The treatment of the subject "Public Law" by Holland and other authors, in our view, has no relevance in appreciating the scope of the concept of regal powers which have acquired a definite connotation. Lord Watson, in Coomber v. Justices of Berks ((1883-84) 9 App. Cas. 61,74), describes the functions such as administration of justice, maintenance of order and repression of crime, as among the primary and inalienable functions of a constitutional Government. Isaacs, J., in his dissenting judgment in The Federated State School Teachers' Association of Australia v. The State of Victoria ((1929) 41 C.L.R. 569), concisely states thus at p. 585:

"Regal functions are inescapable and inalienable. Such are the legislative power, the administration of laws, the exercise of the judicial power. Non-regal functions may be assumed by means of the legislative power. But when they are assumed the State acts simply as a huge corporation, with its legislation as the character. Its action under the legislation, so far as it is not regal execution of the law is merely analogous to that of a private company similarly authorised."

14. These words clearly mark out the ambit of the regal functions as distinguished from the other powers of a State. It could not have been, therefore, in the contemplation of the Legislature to bring in the regal functions of the State within the definition of

industry and thus confer jurisdiction on Industrial Courts to decide disputes in respect thereof. We. therefore, exclude the regal functions of a State from the definition of industry.

*19. Emphasis is laid upon the words "**analogous to the carrying out of a trade or business".** and an argument is built upon those words to the effect that this Court held that only such activities of municipalities analogous to trade or business would be industry within the meaning of the definition of "industry" in the Act. This argument, if we may say so, is the result of an incorrect reading of the decision. There the question was whether the sanitary department of a municipality was an industry within the meaning of the Industrial Disputes Act and whether the dispute between the municipality and its employees in that department was an industrial dispute thereunder. At p. 311, the learned Judge specifically deals with a contention based upon the collocation of the words in the section and observes :*

*"Though the word "understanding" in the definition of "industry" is wedged in between business and trade on the one hand and manufacturing on the other, and though therefore it might mean only a business or trade undertaking, still it must be remembered that if that were so, there was no need to use the word separately from business or trade. **The wider import is attracted even more clearly when we look at the latter part of the definition which refers to "calling, service, employment, or industrial occupation or avocation of workmen." "Undertaking" in the first part of the definition and "industrial occupation or avocation" in the second part obviously mean much more than what is ordinarily understood by trade or business. The definition was apparently intended to include within its scope what might not strictly be called a trade or business venture."***

20. This passage leaves no room for doubt that this Court construed the terms of the definition of "industry" in a way which takes in activities which are not strictly called trade or business.

Therefore, the words "not strictly be called a trade or business venture" and the words "analogous to the carrying out of a trade or business" emphasize more the nature of the organized activity implicit in a trade or business than to equate the other activities with trade or business. This is made more clear by the learned Judge when he expressly reserves the Court's opinion on a wider question in the following words at p. 318 :

"it is unnecessary to decide whether disputes arising in relation to purely administrative work fall within their ambit."

21. We cannot, therefore, agree with the contention that the said decision, it when it expressly accepted the comprehensive meaning which the words of the section naturally bear, intended to circumscribe the wide sweep of the section to business of trade and activities in the nature or business. Nor a fair reading of the section bears out such a construction. We have already indicated our view on the construction of the section, having regard to the clear phraseology used or business or activities analogous to trade or business.

22. ……..

"The material question is : What is the nature of the actual function assumed - is it a service that the State could have left to private enterprise, and, if so fulfilled, could such a dispute be "industrial" ?"

23. This test steers clear of the argument that to be an industry the activity shall be a trading activity. If a service performed by an individual is an industry, it will continue to be so notwithstanding the fact that it is undertaken by a corporation.

24. Another test suggested by the learned council may be scrutinised. It is said that unless there is a be quid pro quo for the service, it cannot be an industry. This is the same argument, namely, that the service must be in the nature of trade in a different garb. this Court in D. N. Banerji v. P. R. Mukherjee ([1953] S.C.R. 302) has held ***that neither the investment***

of capital or the existence of profit earning motive seems to be a sine qua non or necessary element in the modern conception of industry. The conception that unless the public who are benefited by the services pay in cash for the services rendered to them, the services so rendered cannot be industry is based upon an exploded theory. *As observed by Chandrasekhara Aiyar, J., "the conflicts between capital and labour have now to be determined more from the standpoint of status than of contract". Isaac and Rich, JJ., in the Federated Municipal and shire Council Employees' Union of Australia v. Melbourne Corporation ([1918-19] 26 C.L.R. 508, 530-531) formulated the modern concept of industry at p. 554 thus :*

30. We can also visualize different situations. A particular activity of a municipality may be covered by the definition of "industry". If the financial and administrative departments are solely in charge of that activity, there can be no difficulty in treating those two departments also as part of the industry. But there may be cases where the said two departments may not be in charge of a particular activity or service covered by the definition of "industry" but also in charge of other activity or activities falling outside the definition of "industry". In such cases a working rule may be evolved to advance social justice consistent with the principles of equity. ***In such cases the solution to the problem depends upon the answer to the question whether such a department is primarily and predominantly concerned with industrial activity or incidentally connected therewith.***

31. The result of the discussion may be summarized thus : (1) The definition of "industry" in the Act is very comprehensive. It is in two parts : One part defines it from the standpoint of the employer and the other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act. (2) The history of Industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment. (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the

> *definition. Such regal functions shall be confined to legislative power, administration of law and judicial power. (4) If a service rendered by an individual or a private person would be an industry, it would equally be an industry in the hands of a corporation. (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial,administrative or executive, would be entitled to the benefits of the Act. (6) If a department of a municipality discharges many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterion for the purposes of the Act."*

54. From the finding of the learned tribunal that the petitioner Church is an 'industry' and that the reference is thus maintainable, it appears **that the tribunal instead of first deciding whether the petitioner is an 'industry', first decided the claim of the employee, as to why the employee was a 'workman' under the industrial disputes act and on the basis of such finding proceeded to hold that as the respondent is deemed to be a workman, the petitioner is thus an 'industry', which this Court finds is entirely a wrong/erroneous approach in deciding the issue.**

55. Herein, as the employee claims to be a 'workman' under the industrial disputes act, being employed with the petitioner/church which he claims is an 'industry', **it is to be first decided as to whether the petitioner/church is an 'industry'.**

56. In case, it is decided in the positive, only then the employee's claim proceeds. When negative, the claim fails.

57. Now regarding the phrase "analogous to carrying out of a trade or business" ***(City of Nagpur (Supra)).***

58. The phrase has been taken into consideration by the Supreme Court in ***Srinibas Goradia vs Arvind Kumar Sahu & Ors., in Civil Appeal No. ..... of 2025 (arising out of SLP (Civil) No. 3682 of 2025), decided on December 17, 2025,*** the Court held:-

> ***"5.7.5*** *The dominant nature test was propounded and discussed in a slightly different context of considering the definition of "industry", under the Act, in Corporation of the* ***City of Nagpur vs. Employees15,*** *a body like corporation or municipality discharges functions in different areas through working of different departments. This Court observed that a particular activity of municipality may be covered by the definition of "industry' with the financial and administrative departments are solely in charge of that activity,*
>
> > *'But there may be cases where the said two departments may not only be in charge of a particular activity or service covered by the definition of "industry" but also in charge of other activity or activities falling outside the definition of "industry". In such cases a working rule may be evolved to advance social justice consistent with the principles of equity.* ***In such cases the solution to the problem depends upon the answer to the question whether such a department is primarily and predominantly concerned with industrial activity or incidentally connected therewith.'***
> >
> > *(Para 17)*
> > *(emphasis supplied)"*

59. **Analogous** means **similar, comparable, or like another thing in certain ways.** It describes **two different things that share a**

common job, purpose, or feature, making them easy to compare.

60. The word **incidental means happening as a minor result of something else,** occurring by chance, or being less important than the main thing, connected.

And is Less important than the main action or goal.

Unplanned: Happening by chance or without a strict plan.

Connected: Accompanying a main event as a natural byproduct.

61. Analogous herein means **analogous to** the carrying out of a trade or business. The 'analogous' work will be treated as an 'industry' if it is analogous to an establishment which runs a regular trade or business.

62. Thus in the present case:-

i) The petitioner/church is religious and non-profit institution. However, it shares operational similarities with businesses and contributes to the economic landscape.

The petitioner herein, the Armenian Church of the Holy Nazareth functions as a place of worship, the center of the local Armenian community, and the seat of the Armenian Vicariate of India and the Far East.

It serves as the operational Mother Church for Indian Armenians in Kolkata, holding traditional services affiliated with the Mother See of Holy Etchmiadzin.

It also Acts as the cultural and administrative headquarters for the Armenian community in the region.

It preserves a historic courtyard and marble tombstones, functioning as a heritage site and tourist destination that marks centuries of Armenian presence in Bengal.

Churches collect donations, pay staff, and buy supplies.

Their main goal is spiritual growth and community help, **not making money for owners or shareholders.**

They are registered as non-profit or charitable groups and do not pay standard corporate taxes on donations.

They offer worship, comfort, and religious services rather than selling goods or commercial services for profit.

Spiritual services and the propagation of faith are completely different from systematic economic trades or business undertakings.

A diocese/church organization is devoted to spiritual propagation and upkeep of faith, meaning it is not an industry, and its personnel cannot claim the status of workmen under the ID Act.

Thus staff or service workers engaged directly by a church do not satisfy the criteria of an industrial dispute because the institution itself falls outside the definition of an 'industry'.

ii) The respondent/employee, was appointed as a “care taker” and was given specific jobs connected with the purpose and functioning of the petitioner church, it’s services and spiritual acts. Generally, an employee of a church is not considered a “workman” under the Industrial Disputes Act, 1947. This is because religious institutions and dioceses engaged in spiritual, charitable, or propagating activities do not qualify as an "industry" under Section 2(j) of the Act.

The core functions of a church is spreading the Gospel, administering sacraments, and managing spiritual needs which is sovereign or religious duties rather than systematic economic or commercial industrial activity.

Under Section 2(s) of the Industrial Disputes Act, a person qualifies as a workman only if they are employed in an **“industry”** to do manual, unskilled, skilled, technical, operational, clerical, or supervisory work.

Without an "industry," the status of a "workman" cannot be established.

Whether it is a priest, pastor, evangelist, or **general helper** performing duties tied to a religious mission, the relationship is governed by faith and ecclesiastical/charitable administration rather than a standard commercial employer-employee industrial contract.

iii) **Admittedly the petitioner/church does not conduct any trade or business nor carries on any act which is analogous/incidental to trade or business.**

iv) **The sir Catchick Paul Chater Home** admittedly runs on endowments of Sir Catchick Paul. The home provides free service and care to the inmates/destitute/elderly.

v) **Such services provided are not for any trade or business nor analogous/incidental to any trade and business and thus is not an "industry".**

vi) Any investments (if any) in various securities as stated by the employee is for the purpose of running the home to secure funds and is **not trade or business.**

63. Thus the petitioner herein (Armenian Holy Church of Nazareth) admittedly being a religious and non profit organization, runs the Sir Catchick Paul Chater Home, and cares for the elderly, with estate endowments bequeathed, to the petitioner/Armenian Church of Holy Nazareth in Kolkata.

64. Admittedly there is neither any trade or business and nor any analogous/ incidental to any trade or business being carried on by either the petitioner/Church or by the Sir Catchick Paul Chater Home.

65. Investment of funds bequeathed to the home as endowments is neither trade nor business.

66. Thus the petitioner (Armenian Holy Church of Nazareth) is not an 'industry' as defined under Section 2(j) of the Industrial Dispute Act.

67. In view of the finding that the petitioner/Church is not an 'industry', **the respondent no. 1 is thus not a 'workman' as defined under Section 2(s) of the Act and the said issue stands decided accordingly.**

68. The impugned award dated 11th June, 2025, passed by the Learned Fourth Industrial Tribunal, in Case No. VIII-08/2018, is thus **quashed and set aside,** the same being not in accordance with law.

69. WPA 27842 of 2025 is allowed.

70. Applications, if any, connected thereto stand disposed of.

71. Interim order, if any, stands vacated.

72. Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(Shampa Dutt (Paul), J.)