Cricket Club of India Vs. Bombay Labour Union and anr.

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Overruled by : Bangalore Water Supply and Sewerage Board vs. A. Rajappa and Ors

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Court : Supreme Court of India

Decided On : Aug-07-1968

Reported in : AIR1969SC276; [1969(18)FLR10]; (1969)ILLJ775SC; 1969MhLJ407(SC); [1969]1SCR600

Judge : J.M. Shelat,; V. Bhargava and; C.A. Vaidialingam, JJ.

Acts : Industrial Disputes Act, 1947 - Sections 2

Appellant : Cricket Club of India

Respondent : Bombay Labour Union and anr.

Disposition : Appeal allowed

Judgement :
Bhargava, J.

1. The Deputy Commissioner of Labour, Bombay, referred for adjudication by the Industrial Tribunal, Maharashtra, Bombay (hereinafter referred to as 'the Tribunal'), under Section 10(2) of the Industrial Disputes Act (hereinafter referred to as 'the Act'), a dispute between the Cricket Club of India Ltd. (hereinafter referred to as 'the Club') and the workmen employed by it in respect of various demands made by the workmen relating to classification of employees, dearness allowance, leave

facilities, payment for overtime, permanency, shift allowance, etc. A preliminary objection was taken on behalf of the Club that it is not an industry and, consequently, the provisions of the Act were inapplicable and no reference could be competently made under Section 10(2) of the Act The Tribunal rejected this preliminary objection holding that the Club came within the definition of 'industry' in Section 2(j) of the Act and made a direction that the case be set down for hearing on merits. The Club has appealed against this interim award of the Tribunal of the preliminary question, by special leave.

2. The Club is admittedly a Members' Club and is not a proprietary Club, though it is incorporated as a Company under the Indian Companies Act. At the relevant time, the Club had a membership of about 4800 and was employing 397 employees who claimed to be workmen. The principal objects of the Club are to encourage and promote various sports, particularly the game of cricket in India and elsewhere, to lay out grounds for the game of cricket, and also to finance and assist in financing cricket matches and tournaments. In addition, it provides a venue for sports and games as well as facilities for recreation and entertainment for the Members. It maintains Tennis Courts in pursuance of another outdoor activity. The indoor games for which provision is made include Billiards, Table Tennis, Badminton and Squash. It also maintains a swimming pool. The Club has also provision for residence of members, for which purpose it has constructed 48 residential flats and 40 residential rooms some of which are air-conditioned. Persons occupying these residential flats and rooms are charged at different rates according to the accommodation provided. There is also a Catering Department which provides food and refreshments for the members coming to the Club as well as those residing in the residential portion, and it also makes arrangements for dinners and parties on special occasions at the request of Members. The affairs of the Club are managed by an Executive Committee and various honorary office-bearers.

3. As is usual in most Clubs, the membership is varied. There are life members, ordinary members, temporary members, service members and honorary members. Guests both local and from outstation, are admitted, but subject to certain restrictions and only when they are introduced by a member. The Club

owns immovable properties of the value of about Rs. 67 lakhs from which an income in the range of about Rs. 4 lakhs a year accrues to the Club. The other regular source of income is the subscription paid by each member. Entrance paid by the members is treated as a contribution to the capital of the Club. There are regular games for members of the Club; but, apart from those games, in the cricket ground, which has a Stadium attached to it, matches and various tournaments are held, including Test Matches between the Indian teams and foreign teams visiting India. On these occasions, public are admitted to watch the matches on tickets sold by the Club. In addition, it appears that four sports organisations, amongst which mention may be made particularly of the Catholic Gymkhana Ltd., have been given the right, under agreements entered into with the Club, to exclusive use of a number of seats in the stadium whenever there are official and/or unofficial test matches and/or matches of similar status sponsored by the Board of Control for Cricket in India, or when a fixture is played by a foreign team on the Club grounds, though not sponsored by the Board. Under these agreements, these organisations make payment to the Club for the members' seats reserved at prescribed rates and they are at liberty to charge whatever they like from their own members who are admitted to those seats, with the further facility that they can make their own provision for catering and supply of refreshments to their members over part of the land made available to them by the Club. On the occasion of annual Badminton and Table Tennis open tournaments, a stall is run by the Club where both competitors and spectators are allowed to buy snacks and soft drinks at concessional rates. In the Catering Department alone, the turnover of the Club is in the region of Rs. 10 lakhs a year. The Tribunal, after considering these facts and the various decisions which were available to it when it gave its award, has come to the conclusion that the Club is an 'industry', so that this reference under the Act is competent. The Club, which has come up in appeal, contends that the decision of the Tribunal is not correct and that, on the ratio of the decision of this Court in The Secretary, Madras Gymkhana Club Employees' Union v. The Management of the Gymkhana Club, : (1967)IILLJ720SC this Court should hold that the Club is not an industry.

4. Our task for the decision of this case has been simplified, because this Court, in the case of Madras Gymkhana Club (supra), has clearly laid down the principles of

law which have to be applied in determining when a Club can be held to be an industry. In that case, the entire previous case-law relating to various institutions was fully discussed. After that discussion, the conclusion of the Court was mainly expressed in the following words:--

'The principles so far settled come to this. Every human activity in which enters the relationship of employers and employees, is not necessarily creative of an industry. Personal services rendered by domestic and other servants, administrative services of public officials, service in aid of occupations of professional men, such as doctors and lawyers, etc., employment of teachers and so on may result in relationship in which there are employers on the one side and employees on the other, but they must be excluded because they do not come within the denotation of the term 'industry' Primarily, therefore, industrial disputes occur when the operation undertaken rests upon co-operation between employers and employees with a view to production and distribution of material goods, in other words, wealth, but they may arise also in cases where the co-operation is to produce material services. The normal cases are those in which the production or distribution is of material goods or wealth and they will fall within the expression 'trade, business and manufacture'.'

Further, it was held that:--

'before the work engaged in can be described as an industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must be capable of being described as an undertaking in material goods or material services. Now, in the application of the Act, the undertaking may be an enterprise of a private individual or individuals. On the other hand, it may not. It is not necessary that the employer must always be a private individual who carries on the operation with his own capital and with a view to his own profit. The Act in terms contemplates cases of industrial disputes where the Government or a local authority or a public utility service may be the employer.'

Dealing with the scope of the word 'undertaking', it was held that:--

'the word 'undertaking' must be defined as any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade.'

Further essential features were indicated by laying down that:--

'where the activity is to be considered as an industry, it must not be casual but must be distinctly systematic. The work for which labour of workmen is required, must be productive and the workmen must be following an employment, calling or industrial avocation. The salient fact in this context is that the workmen are not their own masters but render service at the behest of masters. This follows from the second part of the definition of industry. Then again when private individuals are the employers, the industry is run with capital and with a view to profits. These two circumstances may not exist when Government or a local authority enter upon business, trade, manufacture or an undertaking analogous to trade.'

It was also decided by the Court that if a Club is a members self-serving institution it cannot be held to be an industry. These are the main principles which have to be kept in view in arriving at the decision whether the Club is an industry or not.

5. The principal argument of Mr. Vimadalal, learned counsel for the Club, was that there is a basic and overall similarity between the Club and the Madras Gymkhana Club, so that the decision of this Court in the case of the latter is fully applicable. It was pointed out that both Clubs are Members' Clubs and not proprietary Clubs. The primary objects of both the Clubs are to provide venues for sports and games and facilities for recreation and entertainment of Members and guests introduced by Members. Both Clubs are sports, social and recreational Clubs. Grounds are maintained by both Clubs for promotion of sports, with the slight difference that, while in the Madras Gymkhana Club the outdoor games promoted are Golf, Rugby, Football and Tennis, in the Club the two outdoor games on which the Club concentrates are Cricket and Tennis. Both have indoor games, while the Club, in addition, maintains a Swimming Pool for the Members. Both Clubs run tournaments and matches for the benefit of members and open tournaments are held for exhibition to members as well as non-members. Both Clubs are maintaining Catering Departments for the entertainment of members and their

guests. In both Clubs guests are allowed only when introduced by members. The annual turnover in both Clubs in the Catering Department is in the region of about Rs. 9 to 10 lakhs. Residential accommodation is maintained in both Clubs and is open only to Members, Both clubs have capital investments from which income accrues to them, though the scale of investments by the Madras Gymkhana Club is much smaller inasmuch as its total investment is of the region of Rs. 4% lakhs, while the Club has investment of immovable property to the tune of about Rs. 67 lakhs. In both Clubs, admission to outsiders is restricted in similar manner. The management in both cases is by Committees elected by Members and annual accounts are made up, audited and laid before and adopted at the annual general meetings. Even in other respects, such as in the matter of admission of Members, relations between members inter se, convening of meetings, and expulsion of members, the rules are similar. In neither of the two Clubs are profits distributed between members. It was thus urged that there is, in fact, no substantial difference between the nature of the Club and the Madras Gymkhana Club and, consequently, it should be held that this Club is not an industry. It was further urged that a few minor differences will not alter the legal inference and will not make the ratio of the Madras Gymkhana Club case (supra) inapplicable.

6. Mr. S.B. Naik, counsel appearing for the Union, however, urged that the differences that exist are not minor and they are such as should lead to the inference that this Club carries on its activities in such a manner that it must be held to be an 'industry' as explained in the Madras Gymkhana Club case, : (1967)IILLJ720SC (Supra).

7. The first point urged before us was that an examination of the objects of the Club would show that it is not purely a social or recreational Club confining its activities to Members like the Madras Gymkhana Club. Our attention was drawn to objects of the Club as given in paragraph 3, Clauses (a), (c), (d), (g), (l) and (na) of the Memorandum of Association of the Club. It was argued that the activity of encouraging and promoting the game of cricket in India and elsewhere mentioned in Clause (a), financing and assisting in financing visits of foreign teams and of visits of Indian teams to foreign countries in Clause (c), organising and promoting or assisting in the organisation or promotion of Provincial Cricket Associations and

Inter-Provincial Tournaments in Clause (d), buying, repairing, making, supplying, selling and dealing in all kinds of apparatus and appliances and all kinds of provisions, liquid and solid, required by persons frequenting the Club buildings or the cricket grounds or other premises of the Club in Clause (g) and paying all or any part of the expenses of any cricket match, tour or tournament, or any other sporting events or match or competition in any other form of game, athletics, or sports and any kind of entertainment, exhibition or display in Clause (1), are not activities which should form part of a social and recreational Club. The argument ignores the fact that the Club is not only a social and recreational Club, but is a Club of Members organised with one of the primary objects encouraging and promoting sports and games. The activity of promotion of sports and games by a set of people combining together to form a Club cannot be said to be an undertaking in the nature of a trade or business in which material goods or material services are provided with the aid of the employees. In Clause (na), the object mentioned is to construct on any premises of the Club buildings of any kind for residential, commercial, sporting or other uses and to repair, or alter or pull down, or demolish the same. In this clause, emphasis was laid on the word 'commercial' and it was urged that if buildings are constructed for commercial purposes, this object will make the Club an 'industry'. We do not consider it necessary to deal with this point at this stage, because the very next point relating to investment of large sums of money in immovable properties indicates how this object is being carried out in practice and, when dealing with this point, we shall indicate that this activity is not of such a nature as to make the Club an 'industry'.

8. We have already mentioned earlier that the Club has acquired immovable properties of the value of about Rs. 67 lakhs. Some of these properties consist of buildings which are being used by the Members of the Club. These are the main Club building and the residential flats and rooms. In addition, there is a Stadium that is used on occasions when Cricket Matches are held on the grounds maintained by the Club. Apart from all these, there are a certain number of buildings just outside the Stadium which are let out for use as shops and offices by business concerns. The income that the Club earns is primarily from these last-mentioned constructions. It was urged that the Club in thus constructing buildings for the purpose of earning income from rents payable by business concerns, to

whom those premises are let out, is carrying on an activity which is in the nature of trade or business and, consequently, it should be held that the Club is an industry. The Tribunal accepted this submission and held:--

'A company which has as its business acquiring of immovable properties on a large scale and for making profit out of the rents thereof would come within the definition of 'industry'. The properties of the C. C. I. which are let out, viz., 48 residential flats, 40 ordinary and air-conditioned rooms; and the premises let to shops and offices form a very large group of properties; the management of them as well as the earnings from them, particularly in the case of the rooms which are let out with compulsory boarding require co-operation between capital and labour.'

In examining this aspect, the Tribunal appears to have fallen into an error in ignoring the circumstance that the income, which is earned by the Club from investment on these immovable properties, can not be held to be income that accrues to it with the aid and co-operation of the employees. The material on the record shows that, out of 397 employees, only 14 attend the three immovable properties consisting of the Club Chambers, North Stand Building, and Stadium House. It may be presumed that the buildings which are let out for use as shops and offices are part of the Stadium House; but there is nothing to show how many of these employees are employed in the work connected with these buildings. In fact, on the face of it, it would appear that, once those buildings have been let out to other persons for use as shops and offices, there would be no need at all for the Club to maintain an employee-staff in order to look after those buildings, so that it is likely that all the 14 employees, who, it is admitted, attend the immovable properties, must be doing so primarily in order to look after the Club buildings and the residential accommodation. It has already been mentioned earlier that the income which the Club is earning from these immovable properties is primarily from the buildings let out for use as shops and offices and that income, in the circumstances, cannot be held to have been earned as a result of any co-operation between the Club and its employees. In earning this income, the Club is not carrying on an activity as a result of which material goods or material services are produced with the co-operation of employees.

9. So far as the residential buildings are concerned, where it appears that some employees must be contributing their labour, the principal consideration for holding that it does not amount to an activity of the nature of an industry is that this residential accommodation is provided exclusively for the Members of the Club. It has been stated that it is meant primarily for outstation Members of the Club who occupy this residential accommodation when they visit Bombay. In addition, it seems that there are 11 Members of the Club who are residing more or less permanently in 11 of these residential rooms. It is also true that members occupying the residential accommodation are required to take advantage of the catering facilities provided by the Club. They are charged consolidated amounts for occupation of the rooms as well as for the food served to them. The Tribunal has held that this activity is in the nature of keeping a Hotel. The view taken by the Tribunal is clearly incorrect, because it ignores the circumstance that this facility is available only to Members of the Club and to no outsider. It is in the nature of a self-service by the Club organised for its Members. The rules which have been brought to our notice make it clear that, apart from Members, no one is allowed to stay in these residential rooms and that, in exceptional cases where some important visitors come to the Club or competitors taking part in tournaments visit this place, they are permitted to stay in these residential rooms, but, in such cases, they are all made Honorary Members of the Club. The facility is thus availed of by them in the capacity of Members of the Club, even though that membership is honorary. The principle of having honorary members is quite common to most Clubs and existed even in the Madras Gymkhana Club. Once a person becomes an honorary member, provision of facilities of the Club for him partakes of the same nature as for other members and, consequently, such an activity by the Club continues to remain a part of it as a self-serving institution. It is quite wrong to equate it with the activity of a Hotel. It may also be mentioned that there is definite evidence given on behalf of the Club that the charges for the residential accommodation with catering are much lower in the Club than the charges made for similar facility in any decent Hotel in Bombay where comparable accommodation may be provided. This further clarifies the position that this is a facility provided by the Club at concessional rates exclusively for its Members.

10. We may at this stage also deal with the argument advanced on behalf of the Union in respect of the nature of catering activities of the Club. So far as the catering in the Refreshment Room maintained by the Club and for persons occupying the residential accommodation is concerned, it is confined to Members of the Club only. No outsider is allowed to take advantage of this facility. In fact, the bye-laws of the Club clearly lay down that, even if a guest is introduced by a Member, the guest is not entitled to pay for any refreshment served to him. The transaction continues to be confined to the Member of the Club who introduces the guest. The Club is of course, not open to public in general and, even when non-members are admitted in the Club, they: are only allowed as guest of members with the certain restrictions. Such guests cannot enter into any transaction with the Catering Department of the Club. Consequently, this catering activity is also in the nature of a self-service by the Club for its members.

11. In connection with this activity of catering, reliance was, however, placed by the respondent Union on two aspects. One is that it has been admitted that, on occasion when Badminton and Table Tennis open tournaments are held, a stall is kept by the Club where, apart from Members, competitors and spectators can also buy snacks and soft drinks; and it was urged that this sale of snacks and soft drinks to non-members is clearly an activity in the nature of business or trade. It appears, however, that these stalls are opened as a rare feature only on occasions when annual Badminton and Table Tennis open tournaments are held. We have been informed that there is only one Badminton and one Table Tennis open tournament every year, so that these stalls are run only twice a year. Further, there is a clear statement that the snacks and soft drinks are provided to competitors and spectators at concessional rates. This indicates that the provision of these stalls is not for the purpose of carrying on an activity of selling snacks and soft drinks, to outsiders, but is really intended as provision of a facility to persons participating in or coming to watch the tournament in order that the tournaments may be run successfully. These stalls are thus brought into existence as a part of the activity of promotion of games and is not a systematic activity for the purpose of carrying on transactions of sale of snacks and soft drinks to outsiders. The opening of stalls on two such occasions in a year with this limited object cannot be held to be an undertaking of the nature of business or trade.

12. It was then pointed out that there have been occasions when very big parties have been held in this Club where catering has been provided by the Club and at these parties, non-members have attended in large numbers. On behalf of the respondent Union, an example was cited of an occasion when a function was held to celebrate the Golden Jubilee of the Bank of India and catering was provided for a large number of guests at the Club. In answer to interrogatories served by the workmen, it was admitted by the Secretary of the Club that there Was also another function of celebration of the Silver Jubilee of the Bombay Merchantile Co-operative Bank Ltd. when also catering was provided by the Club. It was stated on behalf of the workmen that, on these occasions, the invitations were issued not in the name of any Member of the Club, but in the name of the organisations which held the functions. The affidavit filed by the Secretary of the Club, however, shows that in these two cases or in other cases where parties or functions are held in the Club, the Club never enters into any contract With any outsider. The Club, in fact, provides the catering at the instance of a Member of the Club. It appears that some Members of the Club are connected with organisations like the Bank of India or the Bombay Merchantile Cooperative Bank Ltd., and they adopted the course of arranging the function with the Club in their capacity as Members. The privity of contract was between them and the Club, and the Club itself had nothing to do with the two organisations. May be that, in arranging such functions, the Members of the Club, to some extent, abused their privilege of having functions arranged by the Club, but it cannot be held that the Club, in agreeing to cater at such functions, was really intending to sell its goods to persons other than Members. The Club, in fact, realised the dues for such functions from the Members only. The Members were responsible for payment to the Club and did, in fact, make the payments. The Club, in thus catering for such functions, was in fact catering for its Members and was not at all intending to carry on an activity of providing the facility of catering at the instance of outsiders. On behalf of the workmen, it was urged that functions of this nature are numerous and a regular feature in tins Club. In fact, the Tribunal in its order has held that:--

'a systematic arrangement by which Companies and other institutions book the grounds through members, whereby the Club makes profit by charging refreshments per head would bring a Club on the other side of the border line so

as to make it an industry.'

In accepting this view, the Tribunal again fell into an error for two reasons. The first was that the Tribunal did not attach due importance to the circumstance that the functions were arranged by the Club only because of the request of a Member and the Club confined its contract with the Member without in any way dealing with outside organisations. The second point is that there was no material to show that such functions form a systematic arrangement. In fact, only two instances were put forward on behalf of the workmen where functions were arranged for purposes of celebrating the Jubilee functions of two Banks. Further, the affidavit of K. K. Tarapor filed on behalf of the Club shows that, during the four years 1961-62, 1962-63, 1963-64 and 1964-65, the total number of functions at which the attendance was 800 and more, including Members of the Club was 28. We were told that the Tribunal had asked for the figures of functions held during these four years at which the attendance was 800 or more, and, thereupon, this information was supplied in the affidavit of Tarapor. There is no material to show how many of these 28 functions were of the nature of the two functions held for celebration of Jubilees of the two Banks. It is quite likely that a large number of these parties at which the attendance was 800 or more may have been given personally by Members of the Club on their own account in order to entertain people for their own personal celebrations on occasions such as marriages of sons or daughters. In fact, the evidence given before the Tribunal was limited to only two specific instances where functions were held for celebration by organisations and not by Members of the Club themselves. In the absence of any material showing that a large number of parties were of that nature, no inference could follow that this was a systematic arrangement by which the Club was attempting to make profit; and the Tribunal, in basing its decision on this ground, was not correct. The few instances cited do not, in our opinion, indicate that the Club is carrying on this activity in such a manner that it must be held to be an industry.

13. Very great reliance was placed in support of the decision of the Tribunal on the fact that the Club has erected a Stadium at the Cricket field where matches are held and makes an income of about Rs. 2 lakhs on each occasion when a Test Match is held on the Cricket ground by charging for admission tickets sold to

persons who come as spectators to watch the Test Matches. It was further pointed out that, apart from charging for admission to the Stadium from spectators by selling tickets to them, the Club has also entered into agreements with four organisations under which a number of seats in the Stadium are given exclusively for the use of those organisations. We have already had occasion to mention earlier one such organisation, viz., the Catholic Gymkhana Ltd. The nature of these agreements is clear from the copy of the agreement filed before the Tribunal which was entered into between the Club and the Catholic Gymkhana Ltd. Under that agreement, the Club allotted for seating accommodation to the Gymkhana 631 seats in the North Stand for a period of 12 years. The allotment was for use by the Gymkhana on all occasions when official and/or unofficial Test Matches and/or matches of similar status sponsored by the Board of Control for Cricket in India were held, or a fixture played by a foreign touring team not sponsored by the said Board. Under the agreement, the Gymkhana had to pay Rs. 5/- per seat for the first fixture; Rs. 5/- per seat for the second fixture; Rs. 4/- per seat for the third fixture and Rs. 4/- per seat for the fourth fixture. The question that arises is whether these charges made by the Club from these organisations, like the Catholic Gymkhana Ltd., or from spectators to whom tickets are sold, bring into existence an activity of the nature of business or trade so as to convert it into an industry. It is to be noted that one of the principal objects of the Club is the promotion of the game of cricket. In fact, the very first object mentioned in the Memorandum of Association is to encourage and promote the game of cricket in India and elsewhere. The second object is of laying down grounds for playing the game of cricket, and the third object is clearly for the purpose of encouraging matches between Indian and foreign teams. It is clear that the Cricket grounds are being maintained by the Club in pursuance of these objectives. The game of cricket can only be promoted and encouraged if, when matches are hold, facilities are provided not merely for holding the matches, but also for people to watch the matches and to create interest in the public in general in the game of cricket. It was obviously with this object that the Stadium was constructed. Its use by spectators interested in the matches or by members of other organisations interested in the game of cricket is purely for the purpose of encouraging and promoting the game of cricket in pursuance of that primary object of forming the

Club. It is true that, in carrying on this object of the Club, the Club has been charging the spectators by selling tickets to them and also charging organisations to whom seats are specially allotted. So far as seats allotted to those organisations are concerned, we are inclined to accept the argument advanced by Mr. Vimadalal that this arrangement, instead of enuring to the benefit of the Club, in fact is to its disadvantage. We have already indicated that at least in one case of the Catholic Gymkhana Ltd., the charge that is made from the Gymkhana is at a very low rate of Rs. 5/- or Rs. 4/- per seat. On the face of it, if the Club was intending to make profits, it need not have given those seats to the Gymkhana and could have sold the seats to outsiders at much higher rates. The very fact that such agreements have been entered into with organisations connected with the game of cricket shows that, in entering into these agreements, the primary object of the Club was to encourage persons who are interested in the game of cricket, even though at the disadvantage of charging them at much lower rates. So far as charges from spectators are concerned by selling tickets to them, they are obviously realised in order to ensure that the Club can carry on its activity of the promotion of game of cricket and also make up losses for purposes of providing other facilities and amenities to the Members of the Club. It is to be noticed that, in the whole period of 37 years, only 13 Test Matches have been held on the grounds of the Club. Even these Matches are not organised by the Club itself. They are, in fact, organised by the Board of Control for Cricket in India. The Board then arranges with the Bombay Cricket Association, which is the controlling body, for the venue of the Test Match. The Bombay Cricket Association has no ground or Stadium of its own. It is the Bombay Cricket Association that approaches the Club to promote the Test Matches to be played at the Brabourne Stadium of the Club, and the Club accedes to these requests. It will thus be seen that the Club comes in at the last stage of providing the venue and making arrangements for the successful holding of the Test Matches and it is for that purpose, on the few occasions when Test Matches are allotted to the grounds of the Club, that the Club is able to sell tickets in the Stadium and make some income. In these circumstances, we are not inclined to accept the submission made on behalf of the workmen that this activity by the Club is an undertaking in the nature of trade or business. It is, in fact, an activity in the course of promotion of the game of cricket and it is incidental that the

Club is able to make an income on these few occasions which income is later utilised for the purpose of fulfilling its other objects as incorporated in the Memorandum of Association. The holding of the Test Matches is primarily organised by the Club for the purpose of promoting the game of cricket. This activity by the Club cannot, by itself, in our opinion, lead to the inference that the Club is carrying on an industry.

14. Lastly, reference was made to the circumstance that, unlike the Madras Gymkhana Club, the Club has been incorporated as a Limited Company under the Indian Companies Act. It was urged that the effect of this incorporation in law was that the Club became an entity separate and distinct from its Members, so that, in providing catering facilities, the Club, as a separate legal entity, was entering into transactions with the Members who were distinct from the Club itself. In our opinion, the Tribunal was right in holding that the circumstance of incorporation of the Club as a Limited Company is not of importance. It is true that, for purposes of contract law and for purposes of suing or being sued, the fact of incorporation makes the Club a separate legal entity; but, in deciding whether the Club is an industry or not, we cannot base our decision on such legal technicalities. What we have to see is the nature of the activity in fact and in substance. Though the Club is incorporated as a Company, it is not like an ordinary Company constituted for the purpose of carrying on business. There are no share-holders. No dividends are ever declared and no distribution of profits takes place. Admission to the Club is by payment of admission fee and not by purchase of shares. Even this admission is subject to balloting. The membership is not transferable like the right of shareholders. There is the provision for expulsion of a Member under certain circumstances which, feature never exists in the case of a shareholder holding shares in a Limited Company. The membership is fluid. A person retains rights as long as he continues as a Member and gets nothing at all when he ceases to be a Member, even though he may have paid a large amount as admission fee. He even loses his rights on expulsion. In these circumstances, it is clear that the Club cannot be treated as a separate legal entity of the nature of a Limited Co. carrying on business. The Club, in fact, continues to be a Members' Club without any shareholders and, consequently, all services provided in the Club for Members have to be treated as activities of a self-serving institution.

15. For these reasons, we consider that the Order made by the Tribunal, holding that the Club is an 'industry' is incorrect and must be set aside. The appeal is allowed, and the order of the Tribunal, dismissing the preliminary objection of the Club, is set aside. In the circumstances of this case, we direct parties to bear their own costs of this appeal.