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IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

ORIGINAL SIDE

Present:
The Hon'ble Justice Soumen Sen
And
The Hon'ble Justice Saugata Bhattacharyya

A.P.O. No. 47 of 2019

With

W.P. No. 4 of 2017

The Principal Secretary, Department of Labour

vs.

Om Dayal Educational & Research Society & Ors.

A.P.O. No. 48 of 2019

With

W.P. No. 4 of 2017

Employees' State Insurance Corporation & Anr.

Vs.

Om Dayal Educational & Research Society & Ors.

For the Appellant : Mr. Tapan Kumar Mukherjee, Sr. Adv.
Mr. Somnath Naskar, Adv.

For the Respondent : Mr. Soumya Majumder, Adv
Mr. Deepan Kumar Sarkar, Adv.
Mr. Dinabandhu Dan, Adv.

Hearing concluded on : 17.12.2019

Judgment on : 24.12.2019

***Soumen Sen, J.*:-**

1. Since Common questions of law and fact arises in both the appeals, the two appeals are being heard together and disposed of by this common Judgment.

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2. Both the appeals arise out of a judgment and order dated September 13, 2018, passed by the learned Single Judge of this High Court in the writ petition filed by the respondents, being W.P. No. 4 of 2017.

Summary of Facts

3. The facts of these appeals, so far as relevant, are stated hereinafter:

The respondent-writ petitioners say they are a charitable and educational society which manages Delhi Public School Ruby Park, Kolkata and Delhi Public School, Durgapur. They challenged two notifications published in the Kolkata Gazette dated August 28, 2006 and February 10, 2011 by the Labour Department, Government of West Bengal, whereby in exercise of powers conferred under subsection (5) of Section 1 of the Employees' State Insurance Act, 1948 (hereinafter "the said 1948 Act"), inter alia, with approval from the Central Government, the Labour Department extended the provisions of the said 1948 Act to, inter alia, educational institutions (including public, private, aided or partially aided) run by individuals, trusts, societies, or other organisations. The respondent-writ petitioners have also paid certain sums to the Employees' State Insurance Corporation pursuant to the said notifications.

4. The learned Single Judge, in the impugned judgment, has stated that the argument that the institutions of the respondent-writ petitioners were a 'commercial establishment' under Section 2(2) of the West Bengal Shops and Establishments Act, 1963 and carrying on business,

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trade, profession, or any work in connection with, or incidental to, or ancillary to any business, trade, or profession, could not be accepted. His Lordship has stated that the Supreme Court in ***Employees' State Insurance Corpn. v. R.K. Swamy & Ors.,*** **(1994) 1 S.C.C 445** was dealing with the contention of advertising agencies claiming to not be 'shops' for the purposes of the Employees Insurance Act, 1948 being applicable to them. The Supreme Court, the learned Single Judge stated, went on to negate that contention in paragraph 14 of the judgment to state that the said 1948 Act would include the advertising agencies within the meaning of the word 'shop'. It is stated in the judgment that, when the Supreme Court in ***Bangalore Turf Club Ltd. v. Employees' State Insurance Corpn.,*** **(2014) 9 S.C.C. 657** gave a wide meaning to the term 'establishment' in Section 1(5) of the said 1948 Act at paragraph 35 of the judgment, it meant that the said term would include any place where business is conducted. The learned Single Judge went on to state that the judgment of a learned Single Judge of the Karnataka High Court in ***Management of Independent C.B.S.E. Schools Assocn. Karnataka v. Union of India,*** **I.L.R. 2012 Kar. 2664**, where it was held that the word 'otherwise' used in Section 1(5) of the said 1948 Act could not be given restrictive meaning by applying the principles of *ejusdem generis*, was *per incurium* since the Supreme Court's Judgment in ***R & B Falcon (A) Pty. Ltd. v. Commr. Of Income Tax,*** **(2008) 12 S.C.C. 466**, where it was held that the phrase "or otherwise" when following an enumeration of particulars was to be construed restrictively, was not considered. Therefore, the learned Single Judge held that the educational institutions run by the respondent-writ petitioners could not be placed

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within the ambit of the said 1948 Act by the said notifications issued by the Labour Department, Government of West Bengal dated August 28, 2006 and February 10, 2011, and, accordingly, set aside the notification of the State Government extending the provisions of the Employees' State Insurance Act, 1948 to an educational institution. The learned Single Judge also directed the Employees' State Insurance Corporation to refund any amounts that had been deposited by the respondent-writ petitioners pursuant to the aforesaid notifications within six weeks from the date the order was passed.

Submissions of the Parties in Appeal

5. Mr. Tapan Kumar Mukherjee, the learned Senior Counsel for the appellants, submits that the said 1948 Act was made by Parliament under entry 23, 24 of List III of the 7th Schedule of the Constitution of India, which provides that Parliament has the power to make law for the purposes of social security, social insurance and maternity benefits to employees. Therefore, it is argued, that the said 1948 Act is made with a social welfare objective in mind, so it cannot be said that the said 1948 Act is not applicable to the institutions run by the respondent-writ petitioners without considering the scheme and objects of the said 1948 Act. The learned Senior Counsel submits that the impugned order relies on ***R & B Falcon*** *(supra)* at paragraphs 23-26, where Section 115(WB) of the Income Tax Act, 1961 was being considered. The interpretation of a taxation statutes like the Income Tax Act cannot be made applicable, according to the learned Senior Counsel, to welfare legislation like the said 1948 Act which is a beneficial legislation, as has been held in ***Bangalore Turf Club*** *(supra)* at paragraphs 17-21 and

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35 and ***Steel Authority of India Ltd. v. National Union Water Front Worker,*** **(2001) 7 S.C.C. 1** at paragraphs 9 and 25.

6. The learned Senior Counsel submits that the applicability of the said 1948 Act, which is a beneficial legislation, has to be interpreted for the benefit of the employees of any given institution in cases of ambiguity, otherwise the object of the Act would be defeated. According to Mr. Mukherjee, the learned Single Judge in the impugned order has, without consideration of the object and purpose of the Act, held the notifications inapplicable to the institutions of the respondent-writ petitioners. Mr. Mukherjee further submits that the learned Single Judge in the impugned order only considered paragraph 25 of the Hon'ble Supreme Court's judgment in ***T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.,*** **(2002) 8 S.C.C. 481**, whereas 11 questions were framed in the said case, and at paragraph 161 of the aforesaid judgment, it was held that the right of all citizens to set up educational institutions was subject only to Articles 19(6) and 26(a) of the Indian Constitution. The impugned notifications had been issued in exercise of the State's powers under Article 19(6) of the Indian Constitution and, as such, the learned Single Judge committed an error in relying only on one paragraph of the aforesaid judgment. The ratio of a judgment has to be decided by considering the issues that were decided by that judgment instead of placing reliance on a particular paragraph for a proposition of law since a judgment cannot be read as a statute. This full consideration of the judgment in ***T.M.A. Pai***

WWW.LIVELAW.IN

Foundation *(supra)*, Mr. Mukherjee argues, has not been carried out by the learned Single Judge in the impugned order.

7. The learned Senior Counsel submits that the interpretation of the said 1948 Act to not include the institutions of the respondent-writ petitioners' within Section 1(5) of the said 1948 Act is contrary to the settled principle of law that interpretation of beneficial legislation should give effect to the intent of the legislator and the purpose of the Act, as has been held in ***Indian Handicrafts Emporium & Ors. v. Union of India & Ors.*, (2003) 7 S.C.C. 589** at paragraphs 98-102. Ultimately, the learned Senior Counsel submits that the Karnataka High Court in ***Management of Independent C.B.S.E. Schools*** *(supra)* has accepted these arguments and has specifically held that the said 1948 Act applies to educational institutions as well.

8. Per contra, Mr. Soumya Majumder, learned counsel for the respondent-writ petitioners, submits that, firstly, it would appear that for public and aided educational institutions the government has not applied the said 1948 Act, with the public and aided schools being brought under the coverage of the "Swastha Sathy Scheme". So the employees of government-aided and public schools are, therefore, governed by the said scheme and not by the said 1948 Act, and it is not the case of the State Government that both the said scheme and the said 1948 Act are to be extended to the employees of government-aided and public schools. In this regard, the learned counsel draws our attention to the notifications of the State Government issued on February 25, 2016 and September 06, 2017

WWW.LIVELAW.IN

extending the said scheme to teaching and non-teaching staff of primary and secondary schools.

9. Secondly, the learned counsel submits that Section 1(4) of the said 1948 Act primary applies to factories. According to the learned counsel, it was through Amending Act No. 29 of 1989 that the applicability of the said 1948 Act to an 'establishment' other than factories was introduced. Therefore, the legislature's intention behind introducing the said two provisos in Sections 1(4) and 1(5) of the said 1948 Act can be reckoned with by examining the Statement of Objects and Reasons accompanying Amending Act No. 29 of 1989. The learned counsel submits that while the said 1948 Act does not define the terms 'establishment', Regulation 2(i) of the E.S.I. (General) Regulations, 1950 defines the expression "factory or establishment". Therefore, it is clear that the word 'establishment' was not intended to include anything and everything which is not akin to the activities of a factory, otherwise the definition clause in the said Regulation 2(i) would not contain the expression "factory or establishment". The learned counsel submits that when this is read with the external aid of the Statement of Objects and Reasons accompanying the 1989 Amendment Act, the word 'establishment' cannot mean a place where any type of activity is conducted, but must be read in the context of Section 1(5) to mean a place where such activities are commercial, industrial, or agricultural in nature. The learned counsel submits that this is confirmed by a perusal of the entire scheme of the said 1948 Act. The learned counsel distinguishes the judgment in ***Bangalore Turf Club*** *(supra)* by stating that the Court therein

WWW.LIVELAW.IN

was considering the term 'establishment' in the context of the definition of the word 'shop'. The learned counsel further argues that under Sections 2(2) and 2(5) of the West Bengal Shops and Establishments Act, 1963, the word 'establishment' refers to premises which carry on any business, trade, or profession. The same is also the case under Section 2(4) of the West Bengal Regulation of Recruitment in State Government Establishments and Establishments of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999. Even a very wide meaning being given to the word 'establishment' in accordance with these statutes would not bring an educational institution within the ambit of the said 1948 Act since education is not a business, trade or profession but a charitable activity, as has been held in ***T.M.A. Pai Foundation*** *(supra)* at paragraphs 15, 16, 20 and 21 and ***P.A. Inamdar & Ors. v. State of Maharashtra & Ors.*, (2005) 6 S.C.C. 537** at paragraphs 48 and 70, and ***Modern Dental College and Research Centre & Ors. v. State of M.P. & Ors.*, (2016) 7 S.C.C. 353** at paragraph 86.

10. The learned counsel argues that the expression "or otherwise" appearing after the phrase "industrial, commercial and agricultural" must receive *ejusdem generis/noscitur a sociis* interpretation. In support of this point, counsel places reliance on ***R & B Falcon*** *(supra)* at paragraphs 24, 25 and 26, and ***George Da Costa v. Controller of Estate Duty in Mysore, Bangalore*, A.I.R. 1967 S.C. 849** at paragraph 6. Finally, the learned counsel distinguishes the judgment of the Karnataka High Court in ***Management of C.B.S.E. Schools*** *(supra)* by stating that the judgment

WWW.LIVELAW.IN

therein was not considering whether an educational institution is an establishment or not but was only considering the issue of whether employees of educational institutions could be brought within the purview of the said 1948 Act.

11. In reply, Mr. Tapan Kumar Mukherjee stresses that Section 2(24) of the said 1948 Act states that words and expressions used but not defined in the said 1948 shall have the meanings assigned to such expressions or words in the Industrial Disputes Act, 1947. Mr. Mukherjee states that the expression 'industry' is defined in Section 2(j) of the Industrial Disputes Act as including educational, scientific and research training institutions. Therefore, educational institutions may be included within the meaning of 'industrial' in Section 1(5) of the said 1948 Act, and this point was not considered by the learned Single Judge. Mr. Mukherjee submits that the expression 'or otherwise' in Section 1(5) of the said 1948 Act must be interpreted liberally and not by an application of the rule of *ejusdem generis*, since such a phrase is supposed to extend and not limit. For this point, the learned Senior Counsel places reliance on the Constitution Bench judgment of the Supreme Court in ***Lila Vati Bai v. State of Bombay,*** **A.I.R. 1957 S.C. 521** at paragraphs 11 and 12. Mr. Mukherjee states that the ratio of the judgments relied upon by the respondent-writ petitioners in support of their argument that Section 1(5) should be interpreted *ejusdem generis* is inapplicable since the said 1948 Act is a beneficial legislation having regard to Articles 41, 43 and 47 of the Indian Constitution and the Statement of Objects and Reasons

WWW.LIVELAW.IN

accompanying the said 1948 Act along with the scheme of the said 1948 Act. Mr. Mukherjee argues that the cases that do apply are ***Bangalore Turf Club*** *(supra)* and ***Indian Handicrafts Emporium*** *(supra)*, which would support the proposition that educational institutions may be brought under Section 1(5) of the said 1948 Act.

Discussion of the Law and Issues

12. The central issue in this appeal is whether the notifications that made the Employees' State Insurance Act, 1948 (hereinafter "the said 1948 Act") applicable to the respondent-writ petitioners' schools were *ultra vires* Section 1(5) of the said 1948 Act or not. Section 1(5) of the said 1948 Act states as follows:

> "(5) The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a State Government, with the approval of the Central Government, after giving one month's notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, *to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise"* (emphasis added)

13. The notifications that made the said 1948 Act applicable to the respondent-writ petitioners' schools was based on the respondent-writ petitioners' schools being classified as falling within the ambit of Section 1(5) of the said 1948 Act. The key phrase we need to interpret here is "or otherwise". What we very specifically need to decide is whether this phrase can include the educational institutions like that of the respondent-writ petitioners.

WWW.LIVELAW.IN

14. The learned counsel for the respondent-writ petitioners argues that the phrase "or otherwise" in Section 1(5) must be interpreted *ejusdem generis*. The phrase *ejusdem generis* and its applicability as a rule or principle of statutory interpretation and construction has been explained in various legal and judicial dictionaries. The relevant passages from the said dictionaries are set out hereinbelow:-

***Black's Law Dictionary* (10th edn.)** at p. 631:

'**ejusdem generis**.....[Latin "of the same kind or class"] (17c) **1.** A canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed. For example, in the phrase horses, cattle, sheep, pigs, goats, or any other farm animals, the general language or any other farm animals – despite its seeming breadth – would probably be held to include only four-legged, hoofed mammals typically found on farms, and thus would exclude chickens. – Also termed Lord Tenterden's rule. Cf. EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS; NOSCITUR A SOCIIS; RULE OF RANK.**2.** Loosely, NOSCITUR A SOCIIS.

> "Of these canons, ejusdem generis, still occasionally applied today, provides that when a list of specific words is followed by a broader or more general term, the broader term is interpreted to include only potential members of a class similar to those denoted by the specific words. An example from the sixteenth century is the *Archbishop of Canterbury's case*, in which the King's Bench used the principle in interpreting a statute that contained a list of 'inferior' means of conveyance, followed by the phrase 'or any other means.' Even though 'any other means' would seem to include all other types of conveyance, the court limited this catchall phrase to other inferior means of conveyance by an act of Parliament. *Obviously, these canons or maxims presuppose both a careful drafting of the text and a close reading by the judges interpreting it." Peter M. Tiersma, Parchment Paper Pixels: Law and the Technologies of Communication 152 (2010).'* (emphasis added)

***Judicial Dictionary* (15thedn., 2011, Vol. 1)** at p. 565:

'**Rule explained.** When in a statute, particular classes are mentioned by name and then are followed by general words, the general words are sometimes construed ejusdem generis i.e. limited to the same category or

WWW.LIVELAW.IN

genus comprehended by the particular words. But it is *not necessary that this rule must always apply*. The nature of the special words and the general words must be considered before the rule is applied. It follows, therefore, that interpretation *ejusdem generis* or *noscitur a sociis* need not always be made when words showing particular classes are followed by general words. Before the general words can be so interpreted, *there must be a genus constituted or a category disclosed with reference to which the general words can and are intended to be restricted*. [*Jagdish Chandra Gupta v Kajaria Traders (India) Ltd* AIR 1964 SC 1882, [1964] 8 SCR 50, (1965) 1 SCJ 249, (1964) 1 SCWR 675, 66 BLR 709, (1964) ALJ 971, (1965) MPLJ 34, (1963) LJ 45].'

'Rule. Is one to be applied with *caution* and *not pushed too far*, as in the case of many decisions, which treat it as automatically applicable, and not as being, what it is, a *mere presumption, in the absence of other indications of the intention of the legislature*. [State of Bombay v Ali Gulshan Air 1955 SC 810, 812]

It is essential for application of the 'ejusdem generis rule' that enumerated things *before the general wordsmust constitute a category or a genus*. [*Housing Board of Haryana v Haryana Housing Board Employees' Union* (1996) 1 SCC 95, 108 (SC)]' (emphasis added)

***The Major Law Lexicon* (4thedn., 2010, Vol. 3)** at p. 2255:

'The *ejusdem generis* rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when:
(i) the statute contains an enumeration of specific words;
(ii) the subjects or enumeration constitute a class or category;
(iii) that class or category is not exhausted by the enumeration;
(iv) the general term follows the enumeration;
(v) there is no indication of a different legislative intent. *Amar Chandra Chakraborty v. Colletor of Excise,* AIR 1972 SC 1863, 1868, para 9; *ACCE v. RamdevTabacco Co.,* 1991 (51) ELT 631 (SC)"

15. Furthermore, in ***Lila Vati Bai v. State of Bombay,* A.I.R. 1957 S.C. 521**, the Hon'ble Supreme Court was considering the words "or otherwise" appearing in the Explanation to Section 6(4)(a) of the Bombay Land Requisition (Second Amendment) Act, 1950. The Sections 5, 6 and 13 of the said Act, after the amendments, that were considered by the Hon'ble Supreme Court are in these terms:-

"5. (1) If in the opinion of the State Government it is necessary or expedient so to do, the State Government may by order in writing requisition any land for purpose, of the State or any other public purpose:

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Provided that no building or part thereof wherein the owner, the landlord or the tenant, as the case may be, has actually resided for a continuous period of six months immediately preceding the date of the order shall be requisitioned under this section.

(2) Where any building or part thereof is to be requisitioned under sub-section (1), the State Government shall make such enquiry as it deems fit and make a declaration in the order of requisition that the owner, the landlord or the tenant, as the case may be, has not actually resided therein for a continuous period of six months immediately preceding the date of the order and such declaration shall be conclusive evidence that the owner, landlord or tenant has not so resided........

6.(1) If any premises situate in ail area specified by the State Government by notification in the Official Gazette, are vacant on the date of such notification and wherever any such premises are vacant or become vacant after such date by reason of the landlord, the tenant or the sub-tenant, as the case may be, ceasing to occupy the premises or by reason of the release of the premises from requisition or by reason of the premises being newly erected or reconstructed or for any other reason the landlord of such premises shall give intimation thereof in the prescribed form to an officer authorised in this behalf by the State Government......

(4) Whether or not an intimation under sub-section (1) is given and notwithstanding anything contained in section 5, the State Government may by order in writing-

(a) requisition the premises for the purpose of the State or any other public purpose and may use or deal with the premises for any such purpose in such manner as may appear to it to be expedient, or

Provided that where an order is to be made under clause (a) requisitioning the premises in respect of which no intimation is given by the landlord, the State Government shall make such inquiry as it deems fit and make a declaration in the order that the promises were vacant or had become vacant, on or after the date referred to in sub- section (1) and such declaration shall be conclusive evidence that the premises were or had so become vacant:

Explanation-For the purposes of this section,-

(a) premises which are in the occupation of the landlord, the tenant or the sub-tenant, as the case may be, shall be deemed to be or become vacant when such landlord ceases to be in occupation or when such tenant or sub-tenant ceases to be in occupation upon termination of his tenancy, eviction, assignment or transfer in any other manner of his interest in the premises *or otherwise*, notwithstanding any instrument or occupation by any other person prior to the date when such landlord, tenant or sub-tenant so ceases to be in occupation;

WWW.LIVELAW.IN

13.(1) Every order made under ss. 5, 6, 7, 8-A or 8-B or sub-section (7) of section 9 or section 12 shall-

(a) if it is an order of a general nature or affecting a class of persons, be published in the mariner prescribed by rules made in this behalf -

(b) if it is an order affecting an individual, corporation, or firm, be served in the manner provided for the service of a summons in Rule 2 of Order XXIX or Rule 3 of Order XXX, as the case may be, in the First Schedule of the Code of Civil Procedure, 1908 ;

(c) if it is an order affecting an individual person other than a corporation or firm, be served on the person-

(i) personally, by delivering or tendering to him the order, or

(ii) by post, or

(iii) where the person cannot be found, by leaving an authentic copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or worked for gain.

(2) Where a question arises whether a person was duly informed of an order made in pursuance of sections 5, 6, 7, 8-A or 8-B or, sub-section (7) of section 9 or section 12 compliance with the requirements of subsection (1) shall be conclusive proof that he was so informed; but failure to comply with the said requirements shall not preclude proof by other means that he was so informed, or affect the validity of the order." (emphasis added)

The words "or otherwise" were interpreted in paragraph 11 of the said judgment which reads:

" The argument proceeds further to the effect that in the instant case admittedly there was no termination, eviction, assignment or transfer and that the words " or otherwise " must be construed as ejusdem generis with the, words immediately preceding them: observed that by so doing they will be cutting down the intendment of the provisions of the statute when clearly the word,,; "or otherwise" had been used with a contrary intention. The rule of ejusdem generis is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and

WWW.LIVELAW.IN

> mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. *In our opinion, in the context of the object and mischief of the enactment there is no room for the application of the rule of ejusdem generis. Hence it follows that the vacancy as declared by the order impugned in this case, even though it may not be covered by the specific words used, is certainly covered by the legal import of the words "or otherwise"*. (emphasis added)

16. As would be gleaned from these learned authorities, the rule of *ejusdem generis* is not to be applied *inflexibly* and *invariably*. It is a rule that operates only to give us a rebuttable presumption that the words of the statute are restricted in application to a certain 'genus' of things because the statute is not able to exhaustively provide all the elements that would conceivably fall within that genus. In other words, the rule of *ejusdem generis* restricts interpretation only when the words of a statute are categorical in their application and it is cumbersome, impossible, unnecessary or imprudent to seek to enumerate all the constituents of the category to which the statute is made applicable. Even then, *the application of the rule must be appreciative of the context of the genus and the enumeration of the specie*. The rule of *ejusdem generis* does not apply when the words of a statute seek not to provide a category to which it will apply but merely provide a non-exhaustive list of the things to which the statute will apply. That apart, the rule of *ejusdem generis cannot contradict legislative intent* and must either give way to a purposive interpretation if such an interpretation is found to run contrary to the rule or *be applied in consonance with the purposive interpretation of the statute*. Therefore, the natural questions we need ask ourselves now is, firstly, whether the said

WWW.LIVELAW.IN

1948 Act in Section 1(5) creates a genus beyond which we cannot traverse in interpreting the phrase "or otherwise", and secondly, what effect does an examination of the purpose of and legislative intent behind the said 1948 Act have on this *ejusdem generis* understanding of Section 1(5).

17. It would seem the primary authority on the existence of a genus to which the phrase "or otherwise" is conceivably attached in Section 1(5) of the said 1948 Act is ***Bangalore Turf Club Ltd. v. Employees' State Insurance Corpn.*, (2014) 9 S.C.C. 657**, where it is stated (at paragraph 6) that:

> '6. The meaning of the words "or otherwise" after the words "industrial, commercial or agricultural" establishments in sub-section (5) of section 1 indicates that the Government can extend the ESI Act or any portion thereof to any other establishment or class of establishments. The genus lies in the words "any other establishment or class of establishments'. The three words industrial, commercial and agricultural represent a specie. Since the legislature *did not want to restrict the operation of the ESI act to these three species, [it] has used the catch words "or otherwise"*.' (emphasis added)

Needless to say, this understanding of Section 1(5) of the said 1948 Act would negate the argument put forth by the learned counsel for the respondent-writ petitioner that the phrase "or otherwise" in Section 1(5) should be interpreted *ejusdem generis/noscitur a sociis* to include establishments that may be a specie within the genus "industrial, commercial and agricultural". Indeed, that does not mean that *ejusdem generis* interpretation is not to be carried out here, there is still an identifiable genus of "establishment or class of establishments" to which the phrase "or otherwise" is attached, it is only that the genus to which that

WWW.LIVELAW.IN

phrase is attached is far wider than the purported class of industrial, commercial or agricultural establishments.

18. Keeping this point in mind, let us now consider whether an educational institution like the ones owned and managed by the respondent-writ petitioners may fall within the meaning of the word 'establishment'. The starting point for interpreting the word 'establishment' would be to look at the Statement of Objects and Reasons accompanying the Amendment Act No. 29 of 1989, whereby the applicability of the said 1948 Act to an 'establishment' other than factories was introduced. In paragraph 3(i) of the Statement of Objects and Reasons to the Amending Act No. 29 of 1989, it is stated that:

> "Under the existing provisions, the Act is, in the first instance, applicable to factories. The Act can be extended to an establishment only after giving six months, notice to that effect. This creates difficulties in implementing the Act in areas where there are few factories. It is, therefore, now proposed to make this Act applicable simultaneously to factories and other establishments where the Act is applicable in a State to such factories and other establishments in any other parts of the State."

This statement as to the intent of the legislature, even if not completely illuminative of the kinds of establishments, apart from factories, that the said 1958 Act may apply to, certainly tells us that the ambit of the Act's applicability to different kinds of establishments is meant to be wide and expansive rather than narrow or restricted. To put it another way, it tells us that the word 'establishment' is not to be understood narrowly but is to be interpreted as including a wide range of things that are capable of being

WWW.LIVELAW.IN

described as such. This point is further reinforced when we consider the fact that the said 1948 Act is, as submitted by the learned Senior Counsel for the appellants, made under entry 23, 24 of List III of the 7th Schedule of the Constitution of India, which empowers Parliament to legislate on social security, social insurance and maternity benefits to employees. This clearly means that a social welfare objective underpins the said 1948 Act and it must interpreted with that object in mind so as to ensure that a narrow construction of the words of the statute does not infringe the clear purpose of the Act, i.e. to bring about social welfare, without, of course, doing violence to the language of the statute (***Bangalore Turf Club*** *(supra)* at paragraph 21).

19. This general understanding that the said 1948 Act must be interpreted broadly, in keeping with the social welfare objective that underpins the said 1948 Act, has been condensed and reinforced with regard to the interpretation of the word 'establishment' in Section 1(5) of the said 1948 Act by the Supreme Court in ***Bangalore Turf Club*** *(supra)* at paragraph 37:

> 'The term "establishment" would mean the place for transacting any business, trade or profession or work connected with or incidental to or ancillary thereto. *It is true that the definition in dictionaries is the conventional definition attributed to trade or commerce, but it cannot be wholly valid for the purpose of constructing social welfare legislation in a modern welfare State.* The test of finding out whether professional activity falls within the meaning of the expression "establishment" is *whether the activity is systematically and habitually undertaken for the production or distribution of goods and service to the community with the help of employees in the manner of a trade or business in such an undertaking.*' (emphasis added)

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This passage in the judgment in ***Bangalore Turf Club*** *(supra)* is of critical importance to us. Now, counsel for the respondent-writ petitioners has argued that in stating as such, the Supreme Court was only deciding whether a shop could come within the meaning of the word establishment, which implies that this passage of the law has no application to our case. But that argument is exceedingly weak simply because this statement of the law is very much a generalised enunciation of what makes something an establishment under Section 1(5) of the said 1948 Act. It truly frames the interpretation of the word 'establishment' in the widest possible terms with regard to the context of the legislation. The judgment emphasises that not only does the word 'establishment' encompass the traditional understanding of a place where business is transacted but also includes such places where activities of a professional nature are systematically or habitually undertaken for providing goods and services to the community with the help of employees. In other words, it enunciates that if something behaves like an establishment with transactions being undertaken and goods or services being rendered in exchange for something, with the employment of persons for carrying out such transactions, then it is an establishment, even if it does not seem to have a trade or business being carried out by it *stricto sensu*. There is a clear intent by the Supreme Court here to cast the definition of an establishment within the meaning of the said 1948 Act as being wider than just a place where a business is conducted. The Supreme Court is at pains to emphasise that, in the context of a welfare legislation like the said 1948 Act, if there are activities akin to or analogous to some business activities being carried out in a place, like the systematic buying

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and selling of a good or service, employment of persons, and so on, then such a place is an establishment.

20. We may buttress this wider understanding of the word establishment by making reference again to legal and judicial dictionaries, whilst keeping in mind the context and object of the said 1948 Act (See ***Bangalore Turf Club*** *(supra)* at paragraph 31):

> ***The Major Law Lexicon* (4th edn., 2010, Vol. 3)** at p. 2401:
>
> "'ESTABLISHMENT' includes *inter alia* 'an *institution* or place of business or manufacturing apparatus with a separate identifiable existence. [WEBSTER'S *International dictionary*, as relied in *Central Inland Water transport Corpn. v. Workman*, (1975) 4 SCC 348, 353-54, para 8]" (emphasis added)
>
> ***Judicial Dictionary* (15th edn., 2011, Vol. 1)** at p. 598:
>
> "**Establishment.** The dictionary meaning of 'establishment' as given in *Webster's International Dictionary* includes inter alia 'an *institution* or place of business, with it fixtures and organised staff; as large manufacturing establishment. [*Central Inland Water Transport Corporation Ltd v Their Workmen* (1975) 30 Fac LR 391 (SC)]" (emphasis added)
>
> ***Black's Law Dictionary* (10th edn.)** at p. 664:
>
> "**establishment,** n. (15c)....2. an *institution* or place of business" (emphasis added)

The dictionaries speak in one voice in stating that an establishment is not only a place of business but also includes a wider class of entities that can

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be described as institutions. The dictionaries here tell us nothing that would be contrary to the object of the said 1948 Act, rather they only seek to reinforce the Supreme Court's postulations in ***Bangalore Turf Club*** *(supra)* that interpreting the word 'establishment' in the context of social welfare legislation requires us to construe it liberally.

21. To delve into even greater depth in construing the word 'establishment', we may look at the meaning of the word 'institution' as well in the dictionaries to see how it exactly fits within the meaning of the word establishment:

Black's Law Dictionary **(10th edn.)** at p. 918:

"**institution.**(14c)....3. *An established organisation*, esp. one of a public character, such as a facility for the treatment of mentally disabled persons...." (emphasis added)

Judicial Dictionary **(15th edn., 2011, Vol. 1)** at p. 841:

"**Institution.** According to the dictionary meaning, the term 'institution' means 'a body or organization of an association brought into being for the purpose of achieving some object'. *Oxford English Dictionary* defines an 'institution' as an '*establishment*, organisation or association, instituted for the promotion of some object especially one of public or general utility, religious, *charitable, educational*, etc.'. Other dictionaries define the same word as *organised society* established either by law or the authority of individuals for promoting any object, *public or social.* [*K V Krishna Rao v Sub-Collector, Oagole* AIR 1969 SC 563, (1969)1 SCJ 687, (1969) 2 SCA 255, (1969) 1 SCWR 999, (1969) 1 Mad LJ 83, (1969) 1 Andh WR 85]."(emphasis added)

The Major Law Lexicon **(4th edn., 2010, Vol. 3)** at p. 3446:

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> "Organization, particularly one concerned with the promotion of specific subject or *some public object* (e.g. the Royal United Services Institution)"

> "It is a little difficult to define, the meaning of the term 'institution' in the modern acceptation of the word. It means, I suppose, an undertaking formed to promote *some defined purpose having in view generally the instruction or education of the public*. It is the body (so to speak) called into existence to translate the purpose as conceived in the mind of the founders into a living and active principle. *Lord Mancnaghten in Mayor, etc. v. Mcadam,* 1896 AC 500." (emphasis added)

Synthesising these dictionary meanings with those regarding the word establishment, we can say that an establishment, due it being synonymous in meaning to an institution, includes organisations that are religious, charitable or educational in nature and are formed to promote some defined purpose having in view, inter alia, education of the public. This may be read with the test put forth by the Supreme Court in ***Bangalore Turf Club*** *(supra)* at paragraph 37, to state that an *establishment includes an institution which is engaged in the act of achieving a certain purpose, mostly a public purpose (including charity and education), and in the process is engaged in employing persons for providing a good or service to the community*. This interpretation is very much in line with the need to interpret the said 1948 Act liberally due its beneficial nature and the social welfare objective underpinning it. It most certainly expands the purpose of the said 1948 Act to say that the class of establishments to which it may be applied includes organisations of a public or charitable or educational nature and it does not do any violence to the word establishment to say so either, rather it would be misinterpreting the word establishment to say that it may not include organisations of a public or charitable nature. Nowhere is

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this more firmly established than in the specie put forth as belonging to the genus 'establishment' in Section 1(5), which include establishments that are 'industrial', 'commercial', 'agricultural', "or otherwise". The word 'otherwise' here has clearly been placed to specify that the genus of establishments is not restricted to those organisations which are industrial, commercial or agricultural only but also includes organisations which can otherwise fall within the broad definition of the words "establishment or class of establishments"—which, as we have shown, includes institutions of a charitable nature or educational institutions. We are in agreement with the view expressed by the Karnataka High Court in ***Management of Independent C.B.S.E. Schools Assocn. Karnataka v. Union of India,*** **I.L.R. 2012 Kar. 2664.** We are also of the view that the phrase "or otherwise" as used in Section 1(5) of the said 1948 Act is wide enough to cover educational institutions. In fact, our view also finds support in a Division Bench judgment of the Allahabad High Court in ***Maharishi Shiksha Sansthan & Anr. v. State of U.P. & Anr.,*** **2009 (120) F.L.R. 332** at paragraph 5, which was followed by a learned Single Judge of this Hon'ble Court in ***Salesian Province of Kolkata v. State of West Bengal,*** **2011 (4) C.H.N. (Cal.) 456** at paragraph 16. In ***Bangalore Water Supply and Sewerage Board v. A. Rajappa,*** **A.I.R. 1978 S.C. 548**, the Supreme Court has concluded that education can be and is, in its *"institutional form*", an industry. In any case, an educational institution, whether a school or a university, has been treated as an 'industry' by the Supreme Court for the purposes of the Industrial Disputes Act, 1947 in ***A. Sundaramabal v. Govt. of Goa, Daman & Diu & Ors.,*** **A.I.R. 1988 S.C. 1700** at paragraphs 4 to

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6. Although we are not unmindful of the fact that legislative changes in Section 2(j) brought about by the Industrial Disputes (Amendment) Act, 46 of 1982 which, inter alia, includes an educational institution has not yet been notified it is gainsaying that both the Industrial Disputes Act, 1947 and the said 1948 Act are beneficial legislations, with one intending to provide a mechanism and bulwark of protection for employees seeking to air their grievances and the other intending to secure them certain benefits. The legislature thought that an educational institution could be an industry. So, the definition of industry in one may be transported and applied to the other without offending their respective purposes or context of application. Moreover, the traditional system of education in 'Gurukuls', which was essentially non-commercial, over the years has been replaced by the modern concept of 'Commerce in Education', making it more of an industry than anything else.

22. The learned counsel for the respondent-writ petitioner has placed great stress on the point that education as an activity is not considered a trade or a business but is merely a philanthropic activity and approach that is not for the purpose of profiteering, so an educational institution cannot be considered as falling within the ambit of the word establishment as used in Section 1(5) of the said 1948 Act. The cases on which the learned counsel places reliance are, firstly, ***T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.*, (2002) 8 S.C.C. 481** at paragraphs 15, 16, 20 and 21, secondly, ***P.A. Inamdar & Ors. v. State of Maharashtra & Ors.*, (2005) 6 S.C.C. 537** at paragraphs 48 and 70,

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and thirdly, ***Modern Dental College and Research Centre & Ors. v. State of M.P. & Ors.*, (2016) 7 S.C.C. 353** at paragraph 86. These aforesaid cases do not help the respondent-writ petitioners. For, in ***Modern Dental College*** *(supra)*, the Court explains that 'education' in not being a primarily economic activity but a welfare activity aimed at achieving a more egalitarian and prosperous society has to still be read in the context of imposing a regulatory mechanism on private unaided minority and non-minority institutions. The said decision felt that the imposition of such a regulatory structure was a necessity. In fact, Ms. Justice Bhanumati in Her Ladyship's separate opinion has observed that the hard reality is that private educational institutions are necessary in the present day context as they make investments, maintain high standards and provide quality education but that does not mean *that they cannot be regulated*—and such regulation can certainly extend to bringing private educational institutions under the said 1948 Act. As has been explained above, an institution engaged in giving education to the community is not precluded from being considered an establishment for the reason that it is not a trade or business. Rather, it is to be considered an establishment for that reason itself, provided it is engaged in employing persons and is giving a service to the community.

23. The impugned notifications extend the application of the said 1948 Act to, inter alia, educational institutions (including public, private, aided, or partially aided) run by individuals, trusts, societies or other organisations. Such organisations and institutions are by definition institutions either of a charitable nature or educational institutions, which

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are bound to be employing teachers and staff for imparting education. Hence, they are most certainly within the meaning of 'establishments' under Section 1(5) of the said 1948 Act. The respondent-writ petitioners, being a charitable and educational society that runs two schools, most certainly falls within the ambit of the said notification and, in extension, within the meaning of establishments under Section 1(5) of the said 1948 Act.

Conclusion

24. Thus, for the reasons given above, this appeal is allowed and the judgment and order of the learned Single Judge dated September 13, 2018 is set aside. However, there shall be no order as to costs.

Urgent Photostat copies of this order shall be provided to the parties on the usual undertakings.

(Soumen Sen, J.)

I agree.

(Saugata Bhattacharyya, J.)