bar to the availing of the normal rights and remedies of a litigant under section 145 of the Evidence Act has been shown to exist for accused persons in criminal trials. I, therefore, hold that the accused can cross-examine the investigating officer as to his previous statement made by him before the Deputy Superintendent of Police during some departmental proceedings, which statement was reduced to writing—though in third person—and which statement or part thereof is relevant to the matters involved in the trial of the accused. It is further held that if during the course of such cross-examination the accused intends to contradict the witness by confronting him with any part of his such previous statement, it would be incumbent on him to call the attention of the witness to those parts of his previous statement, which are sought to be used for the purpose of contradicting him, before his such previous statement can be proved. It necessarily follows that to enable an accused person to exercise his above-mentioned rights he must be permitted to obtain a copy of the relevant previous statement of the witness according to law. This is all that the learned Sessions Judge has ordered. I am, therefore, unable to find any flaw in the orders under revision and have no hesitation in upholding the same. This petition for revision accordingly fails and is dismssed.

K.S.K.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

THE WORKMEN OF FIRE BRIGADE SECTION OF THE MUNICIPAL COMMITTEE, FARIDABAD,—*Petitioner.*

Versus

K. L. GOSAIN AND OTHERS,—*Respondents.*

Civil Writ No. 3470 of 1968

July 14, 1969

Industrial Disputes Act (*XIV of* 1947)—*Sections* 2(*j*) *and* 10—*Fire Brigade service maintained by a Municipal Corporation—Whether an "industry" within the meaning of section* 2(*j*)—*Disputes between Fire Brigade employees and the Municipal Corporation—State Government—Whether can refer such disputes to an Industrial Tribunal under section* 10.

Held, that a Municipal Corporation is as much an employer as a private person and there can be no manner of doubt that juristic persons are also covered by the expression "employer" as defined in section 2(j). A Municipal Corporation is a public corporation and primarily a non-trading one since it has mostly governmental functions to perform within a specified territory. It is indeed a State in miniature. Some of the activities of a Municipal Corporation may be analogous to a business or trade, but it is not every activity of a Municipal Corporation in the performance of which if a dispute arises between the Corporation and its employees, it becomes an industrial dispute. Each case has to be decided on its own facts and circumstances whether an activity is an industry and a dispute an industrial one. Fire Brigade Service maintained by a Municipal Corporation is a "service" and also an "industry" within the concept of "industry" as defined in section 2(j) of Industrial Disputes Act. In this definition, there are no limitations pre-fixed to the word "undertaking" and hence the definition can be given a wider meaning. Disputes between Fire Brigade employees and Municipal Corporation can therefore be referred by the State Government for adjudication to an Industrial Tribunal under section 10 of the Act. (Para 7)

Petitions under Articles 226 and 227 of the Constitution of India praying that the award of respondent No. 1 made on 23rd April, 1968 and published in the Haryana Government Gazette on May 7, 1968, be quashed, and the respondent No. 1 be directed to give the award on merits.

L. D. ADLAKHA AND S. K. AGGARWAL, ADVOCATES, for the Petitioner.

R. S. MITTAL, ADVOCATE, for Respondent No. 3 AND K. L. JAGGA, ASSISTANT ADVOCATE-GENERAL (HARYANA), for other Respondents.

JUDGMENT

SODHI, J.—This writ petition raises an important question as to whether a Fire Brigade Service maintained by Municipal Committee, Faridabad, is an industry within the meaning of section 2(j) of the Industrial Disputes Act, 1947 (14 of 1947) (hereinafter called the Act), so as to give jurisdiction to the State Government, under section 10, to refer a dispute between a Municipal Committee and its employees to the Industrial Tribunal for adjudication of the same. The facts which led to the writ petition are not in controversy.

(2) The petitioners who are the workmen of the Fire Brigade section of the Municipal Committee used to be supplied free electricity and water in their quarters, according to the alleged terms and conditions of their service. The bills had, therefore, to be paid to the departments of electricity and water supply by the Municipal Committee, respondent 3, and the Fire Officer, Haryana, Chandigarh, respondent 2. These respondents did not pay the bills

for some time with the result that water and electricity connections of the petitioners' quarters were cut off in the year 1965. The petitioners thus aggrieved moved the State Government by raising what they described to be an industrial dispute but the conciliation proceedings brought about under the Act produced no effect. The State Government then made a reference, under section 10 of the Act, to the Industrial Tribunal, Haryana, respondent 1,—*vide* Haryana Government notification No. ID/FRD/206C/52104, dated 6th December, 1967, in the following terms:—

> "Whether the action of the management in withdrawing the free supply of electricity was justified and in order? If not, to what relief the workers are entitled and from which date?"

(3) On the pleas raised by the workmen and the Municipal Committee, the following issues were framed by respondent 1, industrial Tribunal, Haryana:—

(1) Whether the activities of the Municipal Committee which are relevant in the present case cannot be deemed to be an industry and as such the dispute in question is not an industrial dispute ?

(2) Whether the Fire Officer and the Municipal Committee contravened the provisions of section 9-A of the Industrial Disputes Act ? If so, what is its effect on the present reference ?

(3) Is the dispute in question not an industrial dispute for various reasons given in the written statement of the Municipal Committee ?

(4) Is the demand in question stale and belated? If so, what is its effect on the present case?

(5) Whether the action of the management in withdrawing the free supply of electricity was justified and in order? If not, to what relief the workers are entitled and from which date ?

(4) It has been found by the Tribunal that the Municipal Committee was always willing to supply free electricity to the staff of

the Frre Brigade which consisted of about 25 employees, and even passed a resolution on 2nd March, 1965, approving the payment of the electric bills of the Fire Brigade staff quarters and promising to pay the same in future as well, but the auditors raised an objection as a result whereof the petitioners had to be deprived of this amenity. In the opinion of the Tribunal the objection of the auditors was not very clear and intelligible but the Municipal Committee could not find its way to overcome the same. The Government, therefore, did not permit the Municipal Committee to pay the bills, and finally all the representations of the workmen were turned down in the year 1967. It was then that a demand notice was served by the workmen of the Fire Brigade on the Municipal Committee which led to the present reference.

(5) In view of these findings, the Tribunal found no justification on the part of the Municipal committee or the Fire Brigade Officer to deny the petitioners their right of free supply of electricity but felt compelled to refuse the relief to the petitioners because of its finding that the activity of the Municipal Committee in running the Fire Brigade service could not possibly be deemed to be an industry and the dispute arising was thus not an industrial dispute on which he could adjudicate. The expression "industry" has been defined in section 2(j) of the Act, as under:—

> " "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."

The expression "employer" has also been defined in clause (ii), sub-section (g) of the same Section and means—

> "(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority".

(6) The Tribunal relied upon tests laid down by the Supreme Court in *Madras Gymkhana Club Employees' Union* v. *Gymkhana Club*, (1), in order to come to the conclusion that the activity of the Committee in running the Fire Brigade service could possibly be

(1) 1967 II L.L.J. 720.

described as an industry as according to it, Fire Brigade service does not fall in any of the categories, *viz.*, business, trade undertaking, manufacture, or calling of employers as referred to in section 2(j). There is a direct authority of the Supreme Court dealing with Fire Brigade service and reported as *Corporation of City of Nagpur* v. *Its employees* (2). This was not followed by the Tribunal because of some observations made by their Lordships in *Madras Gymhana Club Employees' Union's case* (1). Relevant observations of the Supreme Court which seem to have impelled the Tribunal not to follow the direct authority on the point are are follows :—

> "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'. This is the test laid down in Banerji case (1953-I-L.L.J. 195) *vide* supra and followed in the Baroda Borough Municipal Case (1957-I.L.J. 8). Its extension in the Corporation case 1960 (I-L.L.J. 523), *vide* supra *was unfortunate and contradicted the earlier cases.*"

(7) A Municipal Corporation is as much an employer as a private person and there can be no manner of doubt that juristic persons are also covered by the expression "employer" as defined in section 2(j). A Municipal Corporation is a public corporation and primarily a non-trading one since it has mostly governmental functions to perform within a specified territory. It is indeed a State in miniature. At the same time, it cannot be disputed that some of the activities of a Municipal Corporation may be analogous to a business or trade. It is not every activity of a Municipal Corporation in the performance of which if a dispute arises between the Corporation and its employees, it becomes an industrial dispute. Each case has to be decided on its own facts and circumstances keeping in view as to whether applying the various tests laid down by their Lordships of the Supreme Court in different cases, an activity is an industry and a dispute an industrial one. In *Madras Gymkhana Club Employees' Union's case* (1), their Lordships did not favour the extended meaning given in an earlier decision of that Court in the *Corporation of City of Nagpur's case* (2), to the expression "undertaking" which is fairly elastic. Be that as it may, there can be no denying the fact that the specific judgment in that case was not

(2) 1960 I L.L.J. 523.

over ruled. Every judgment is an authority for what it decides and not for the various observations made therein which may be in the nature of a reasoning or an *obiter dicta* to support the decision arrived at. Even if it be held that "undertaking" to fall within the concept of "industry" must be an enterprise analogous to business or trade, there cannot be a dispute that Fire Brigade service is such an undertaking as held by the Supreme Court. It is not necessary that the activity must be one which is likely to bring profit before it can fall in the category of an industry. Fire Brigade service is a 'service' and also an 'undertaking' within the meaning of section 2(j) of the Act. Section 2(n) defines "public utility service" and means :—

"(i) any railway service, or any Transport service, for the carriage of passengers or goods by air.

(ii) * * * *

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(vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public untility service for the purposes of this Act, for such period as may be specified in the notification :

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time if in the opinion of the appropriate Government public emergency or public interest requires such extension; "

The First Schedule which is co-related with sub-clause (vi) of clause (n) of section 2 gives various industries which may be declared to be public utility services and Fire Brigade service is one of them. Legislature has treated Fire Brigade service as an

industry which can be declared by the appropriate Government to be a public utility service giving rise to industrial disputes and other consequences connected therewith. The Supreme Court in the *Corporation of City of Nagpur's case* (2), was dealing with the Central provinces and Berar Industrial Disputes Settlement Act, 1947. That Act gave the definition of "industry" in somewhat different language and limited the scope of an undertaking. It included :—

"(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."

In the definition of the expression "industry" as given in the Industrial Disputes Act, 1947, there are no limitations pre-fixed to the word "undertaking" which can be given a wider meaning. Their Lordships deciding the *Corporation of City of Nagpur's case* (2), gave extended meaning to the expression "undertaking" in spite of the limitations laid therein. The subsequent decision of the Supreme Court in *Madras Gymkhana Club Employees' Union's case* (1), has laid down some additional tests to determine whether an activity is industry or not, but it does not mean that the decision in the *Corporation of City of Nagpur's case* (2), does not hold the field. In my opinion, the Industrial Tribunal went wrong and committed an error apparent in not following the judgment of the Supreme Court which is on all fours with the present case and instead relying on some observations made in *Madras Gymkhana Club Employees' Union's case* (1). On merits, the Tribunal has given a finding that *prima facie* the workmen are entitled to the concessions claimed by them but has not disposed of all the issues.

(8) For the foregoing reasons, I allow the writ petition, quash the impugned award of the Industrial Tribunal and direct that it should proceed to dispose of all the other issues on merits. I asses the costs of the petitioners at Rs. 150.

K.S.K.

bar to the availing of the normal rights and remedies of a litigant under section 145 of the Evidence Act has been shown to exist for accused persons in criminal trials. I, therefore, hold that the accused can cross-examine the investigating officer as to his previous statement made by him before the Deputy Superintendent of Police during some departmental proceedings, which statement was reduced to writing—though in third person—and which statement or part thereof is relevant to the matters involved in the trial of the accused. It is further held that if during the course of such cross-examination the accused intends to contradict the witness by confronting him with any part of his such previous statement, it would be incumbent on him to call the attention of the witness to those parts of his previous statement, which are sought to be used for the purpose of contradicting him, before his such previous statement can be proved. It necessarily follows that to enable an accused person to exercise his above-mentioned rights he must be permitted to obtain a copy of the relevant previous statement of the witness according to law. This is all that the learned Sessions Judge has ordered. I am, therefore, unable to find any flaw in the orders under revision and have no hesitation in upholding the same. This petition for revision accordingly fails and is dismssed.

K.S.K.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

THE WORKMEN OF FIRE BRIGADE SECTION OF THE MUNICIPAL COMMITTEE, FARIDABAD,—*Petitioner.*

Versus

K. L. GOSAIN AND OTHERS,—*Respondents.*

Civil Writ No. 3470 of 1968

July 14, 1969

Industrial Disputes Act (*XIV of* 1947)—*Sections* 2(*j*) *and* 10—*Fire Brigade service maintained by a Municipal Corporation—Whether an "industry" within the meaning of section* 2(*j*)—*Disputes between Fire Brigade employees and the Municipal Corporation—State Government—Whether can refer such disputes to an Industrial Tribunal under section* 10.

Held, that a Municipal Corporation is as much an employer as a private person and there can be no manner of doubt that juristic persons are also covered by the expression "employer" as defined in section 2(j). A Municipal Corporation is a public corporation and primarily a non-trading one since it has mostly governmental functions to perform within a specified territory. It is indeed a State in miniature. Some of the activities of a Municipal Corporation may be analogous to a business or trade, but it is not every activity of a Municipal Corporation in the performance of which if a dispute arises between the Corporation and its employees, it becomes an industrial dispute. Each case has to be decided on its own facts and circumstances whether an activity is an industry and a dispute an industrial one. Fire Brigade Service maintained by a Municipal Corporation is a "service" and also an "industry" within the concept of "industry" as defined in section 2(j) of Industrial Disputes Act. In this definition, there are no limitations pre-fixed to the word "undertaking" and hence the definition can be given a wider meaning. Disputes between Fire Brigade employees and Municipal Corporation can therefore be referred by the State Government for adjudication to an Industrial Tribunal under section 10 of the Act. (Para 7)

Petitions under Articles 226 and 227 of the Constitution of India praying that the award of respondent No. 1 made on 23rd April, 1968 and published in the Haryana Government Gazette on May 7, 1968, be quashed, and the respondent No. 1 be directed to give the award on merits.

L. D. ADLAKHA AND S. K. AGGARWAL, ADVOCATES, for the Petitioner.

R. S. MITTAL, ADVOCATE, for Respondent No. 3 AND K. L. JAGGA, ASSISTANT ADVOCATE-GENERAL (HARYANA), for other Respondents.

JUDGMENT

SODHI, J.—This writ petition raises an important question as to whether a Fire Brigade Service maintained by Municipal Committee, Faridabad, is an industry within the meaning of section 2(j) of the Industrial Disputes Act, 1947 (14 of 1947) (hereinafter called the Act), so as to give jurisdiction to the State Government, under section 10, to refer a dispute between a Municipal Committee and its employees to the Industrial Tribunal for adjudication of the same. The facts which led to the writ petition are not in controversy.

(2) The petitioners who are the workmen of the Fire Brigade section of the Municipal Committee used to be supplied free electricity and water in their quarters, according to the alleged terms and conditions of their service. The bills had, therefore, to be paid to the departments of electricity and water supply by the Municipal Committee, respondent 3, and the Fire Officer, Haryana, Chandigarh, respondent 2. These respondents did not pay the bills

for some time with the result that water and electricity connections of the petitioners' quarters were cut off in the year 1965. The petitioners thus aggrieved moved the State Government by raising what they described to be an industrial dispute but the conciliation proceedings brought about under the Act produced no effect. The State Government then made a reference, under section 10 of the Act, to the Industrial Tribunal, Haryana, respondent 1,—*vide* Haryana Government notification No. ID/FRD/206C/52104, dated 6th December, 1967, in the following terms:—

> "Whether the action of the management in withdrawing the free supply of electricity was justified and in order? If not, to what relief the workers are entitled and from which date?"

(3) On the pleas raised by the workmen and the Municipal Committee, the following issues were framed by respondent 1, industrial Tribunal, Haryana:—

(1) Whether the activities of the Municipal Committee which are relevant in the present case cannot be deemed to be an industry and as such the dispute in question is not an industrial dispute ?

(2) Whether the Fire Officer and the Municipal Committee contravened the provisions of section 9-A of the Industrial Disputes Act ? If so, what is its effect on the present reference ?

(3) Is the dispute in question not an industrial dispute for various reasons given in the written statement of the Municipal Committee ?

(4) Is the demand in question stale and belated? If so, what is its effect on the present case?

(5) Whether the action of the management in withdrawing the free supply of electricity was justified and in order? If not, to what relief the workers are entitled and from which date ?

(4) It has been found by the Tribunal that the Municipal Committee was always willing to supply free electricity to the staff of

the Frre Brigade which consisted of about 25 employees, and even passed a resolution on 2nd March, 1965, approving the payment of the electric bills of the Fire Brigade staff quarters and promising to pay the same in future as well, but the auditors raised an objection as a result whereof the petitioners had to be deprived of this amenity. In the opinion of the Tribunal the objection of the auditors was not very clear and intelligible but the Municipal Committee could not find its way to overcome the same. The Government, therefore, did not permit the Municipal Committee to pay the bills, and finally all the representations of the workmen were turned down in the year 1967. It was then that a demand notice was served by the workmen of the Fire Brigade on the Municipal Committee which led to the present reference.

(5) In view of these findings, the Tribunal found no justification on the part of the Municipal committee or the Fire Brigade Officer to deny the petitioners their right of free supply of electricity but felt compelled to refuse the relief to the petitioners because of its finding that the activity of the Municipal Committee in running the Fire Brigade service could not possibly be deemed to be an industry and the dispute arising was thus not an industrial dispute on which he could adjudicate. The expression "industry" has been defined in section 2(j) of the Act, as under:—

> " "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."

The expression "employer" has also been defined in clause (ii), sub-section (g) of the same Section and means—

> "(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority".

(6) The Tribunal relied upon tests laid down by the Supreme Court in *Madras Gymkhana Club Employees' Union* v. *Gymkhana Club*, (1), in order to come to the conclusion that the activity of the Committee in running the Fire Brigade service could possibly be

(1) 1967 II L.L.J. 720.

described as an industry as according to it, Fire Brigade service does not fall in any of the categories, *viz.*, business, trade undertaking, manufacture, or calling of employers as referred to in section 2(j). There is a direct authority of the Supreme Court dealing with Fire Brigade service and reported as *Corporation of City of Nagpur* v. *Its employees* (2). This was not followed by the Tribunal because of some observations made by their Lordships in *Madras Gymhana Club Employees' Union's case* (1). Relevant observations of the Supreme Court which seem to have impelled the Tribunal not to follow the direct authority on the point are are follows :—

> "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'. This is the test laid down in Banerji case (1953-I-L.L.J. 195) *vide* supra and followed in the Baroda Borough Municipal Case (1957-I.L.J. 8). Its extension in the Corporation case 1960 (I-L.L.J. 523), *vide* supra *was unfortunate and contradicted the earlier cases.*"

(7) A Municipal Corporation is as much an employer as a private person and there can be no manner of doubt that juristic persons are also covered by the expression "employer" as defined in section 2(j). A Municipal Corporation is a public corporation and primarily a non-trading one since it has mostly governmental functions to perform within a specified territory. It is indeed a State in miniature. At the same time, it cannot be disputed that some of the activities of a Municipal Corporation may be analogous to a business or trade. It is not every activity of a Municipal Corporation in the performance of which if a dispute arises between the Corporation and its employees, it becomes an industrial dispute. Each case has to be decided on its own facts and circumstances keeping in view as to whether applying the various tests laid down by their Lordships of the Supreme Court in different cases, an activity is an industry and a dispute an industrial one. In *Madras Gymkhana Club Employees' Union's case* (1), their Lordships did not favour the extended meaning given in an earlier decision of that Court in the *Corporation of City of Nagpur's case* (2), to the expression "undertaking" which is fairly elastic. Be that as it may, there can be no denying the fact that the specific judgment in that case was not

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over ruled. Every judgment is an authority for what it decides and not for the various observations made therein which may be in the nature of a reasoning or an *obiter dicta* to support the decision arrived at. Even if it be held that "undertaking" to fall within the concept of "industry" must be an enterprise analogous to business or trade, there cannot be a dispute that Fire Brigade service is such an undertaking as held by the Supreme Court. It is not necessary that the activity must be one which is likely to bring profit before it can fall in the category of an industry. Fire Brigade service is a 'service' and also an 'undertaking' within the meaning of section 2(j) of the Act. Section 2(n) defines "public utility service" and means :—

"(i) any railway service, or any Transport service, for the carriage of passengers or goods by air.

(ii) * * * *

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(vi) any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public untility service for the purposes of this Act, for such period as may be specified in the notification :

Provided that the period so specified shall not, in the first instance, exceed six months but may, by a like notification, be extended from time to time, by any period not exceeding six months, at any one time if in the opinion of the appropriate Government public emergency or public interest requires such extension; "

The First Schedule which is co-related with sub-clause (vi) of clause (n) of section 2 gives various industries which may be declared to be public utility services and Fire Brigade service is one of them. Legislature has treated Fire Brigade service as an

industry which can be declared by the appropriate Government to be a public utility service giving rise to industrial disputes and other consequences connected therewith. The Supreme Court in the *Corporation of City of Nagpur's case* (2), was dealing with the Central provinces and Berar Industrial Disputes Settlement Act, 1947. That Act gave the definition of "industry" in somewhat different language and limited the scope of an undertaking. It included :—

"(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."

In the definition of the expression "industry" as given in the Industrial Disputes Act, 1947, there are no limitations pre-fixed to the word "undertaking" which can be given a wider meaning. Their Lordships deciding the *Corporation of City of Nagpur's case* (2), gave extended meaning to the expression "undertaking" in spite of the limitations laid therein. The subsequent decision of the Supreme Court in *Madras Gymkhana Club Employees' Union's case* (1), has laid down some additional tests to determine whether an activity is industry or not, but it does not mean that the decision in the *Corporation of City of Nagpur's case* (2), does not hold the field. In my opinion, the Industrial Tribunal went wrong and committed an error apparent in not following the judgment of the Supreme Court which is on all fours with the present case and instead relying on some observations made in *Madras Gymkhana Club Employees' Union's case* (1). On merits, the Tribunal has given a finding that *prima facie* the workmen are entitled to the concessions claimed by them but has not disposed of all the issues.

(8) For the foregoing reasons, I allow the writ petition, quash the impugned award of the Industrial Tribunal and direct that it should proceed to dispose of all the other issues on merits. I asses the costs of the petitioners at Rs. 150.

K.S.K.