

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 358 of 2003

National Remote Sensing Centre vs. H. Sunder & Ors.

SUBMISSIONS BY VIJAY HANSARIA, SR ADVOCATE**I. Triple Test necessary to explain the meaning of industry under section 2(j)**

1. Section 2(j) of the Industrial Disputes Acts, 1947 defines the expression "industry" to mean "any business, trade, undertaking, manufacture or calling of employers". It is submitted that the triple test laid down in para 140 of *Bangalore Water Supply* namely, (i) systematic activity (ii) cooperation between employer - employee and (iii) production or distribution of goods or services are **inherent, essential, crucial, vital and necessary** for all business, trade, undertaking, manufacture or calling of employers mentioned in section 2(j). Alternatively put, no business, trade, undertaking, manufacture or calling of employers can be carried out unless there is systematic activity **in** cooperation between employer and employee **for** production or distribution of goods or services. Thus, the judgment of this Hon'ble Court in *Bangalore Water Supply* merely explains the expression 'industry' and does not go beyond the scope of statutory intendment.

II. Restrictive meaning of industry would deprive 'workmen' various benefits conferred under the ID Act in tune with the international covenants

2. It is submitted that the Industrial Disputes Act, 1947 has conferred various benefits to the workmen who are vulnerable, have unequal or no bargaining power and are at the mercy of their employer as regards conditions of service. The ID Act has been amended from time to time to safeguard interests of the

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workmen and has conferred various protection. A restrictive meaning of industry would deprive the workmen the following benefits available under the ID Act:

1. *Section 3:* Works Committee is constituted to promote good relations between employer and an employee and it must necessarily have the representatives of the employee not be less than the number of representatives of the employer.
2. *Section 9A:* The conditions of service of the workmen cannot be changed without giving 21 days notice of the proposed change. Under section 9B the appropriate government has the power to grant exemption to an industrial establishment in public interest.
3. *Section 9C:* Grievance Settlement Authorities required to be set up for resolution of disputes arising out of individual grievances which must consist of an equal number of members from the employer and the workmen.
4. *Section 10A:* Voluntary reference of disputes to arbitration by consent of parties.
5. *Section 11:* Provision of conciliation by the Conciliation officer in respect of any existing or apprehended dispute.
6. *Section 11A:* Power of the Industrial Tribunal to adjudicate industrial disputes and award relief of reinstatement and/or lesser punishment. The Civil court has no power to grant relief of reinstatement or modify the quantum of punishment.
7. *Section 15:* Industrial disputes to be decided in a time bound manner.
8. *Section 17B:* Payment of full wages to the workmen who has been directed reinstatement pending appeal before higher courts.
9. *Section 25C:* Right of workmen for compensation during the period of lay-off.

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10. *Section 25F*: A workman can be retrenched only after giving one month's notice indicating the reasons for retrenchment or has been paid retrenchment compensation at the time of retrenchment. An employee can be retrenched only by following the principles of 'last come first go' prescribed under *section 25G*.
11. *Section 25FF*: Compensation to workmen in cases transfer of undertakings.
12. *Section 25FFA*: Sixty days' notice to be given of intention to close down any undertaking.
13. *Section 25H*: Re-employment of retrenched workmen.
14. Chapter V-B (*Section 25K to 25S*) : Special provisions relating to lay-off, retrenchment and closure in respect of certain establishments which engage 100 workmen or more on an average per working day in the preceding 12 months.
15. *Section 25T & 25U*: Prohibition of unfair labour practices and penalty on the employer for committing unfair labour practice. Unfair labour practice has been defined in section 2(ra) read with Fifth Schedule.
16. *Section 33C*: recovery of money due from an employer as arrears of land revenue.
17. *Section 36B*: Power to exempt any industrial classification.

III. State to act as model employer

3. It is pertinent to note that all the appeals before this Hon'ble Court are by State Governments who are supposed to be model employers, as held by this Hon'ble Court in a series of judgements. Please see:
 - a. *Bhola Nath v. State of Jharkhand*, 2026 SCC OnLine SC 129

"11.1. This Court has consistently held that the State, being a model employer, is saddled with a heightened obligation in the discharge of its

functions. A model employer is expected to act with high probity, fairness and candour, and bears a social responsibility to treat its employees in a manner that preserves their dignity. The State cannot be permitted to exploit its employees or to take advantage of their vulnerability, helplessness or unequal bargaining position.

11.2. It therefore follows that the State is required to exercise heightened caution in its role as an employer, the constitutional mandate casting upon it a strict obligation to act as a model employer, an obligation from which no exception can be countenanced."

- b. *State of Jharkhand v. Harihar Yadav*, (2014) 2 SCC 114 : Earlier judgements that the State must act as a model employer have been cited with approval. (Para 53 to 57)

IV. Industrial Disputes Act, 1947 is a beneficial legislation

4. It is erroneous to contend that the judgement of this Hon'ble Court in *Bangalore Water Supply* is workman centric. The legislative aim behind the enactment of Industrial Disputes Act has been explained by this Hon'ble Court in *Lenin Kumar Ray*¹

"10. At the outset, it is pertinent to point out that the Industrial Disputes Act, 1947, was enacted by the legislature to settle the industrial disputes. It was brought with the object to ensure social justice to both the employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties."

V. Stare Decisis

5. It is submitted that on the principle of '**Stare Decisis**', the judgment of this Hon'ble Court in *Bangalore Water Supply* does not require reconsideration as it has stood the test of time by various subsequent pronouncements except on two

¹ *Lenin Kumar Ray v. Express Publications (Madurai) Ltd.*, 2024 SCC OnLine SC 2987

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occasions. The definition of the expression 'industry' in the case of *Bangalore Water Supply* has been consistently followed. Please see the list of judgements which have followed the said ratio. (Vol II Page 261-271).

6. It is only in two cases that the correctness of the judgement in *Bangalore Water Supply* has been doubted by subsequent Benches, details of which are as follows:

a. In *Coir Board v Indira Devai*², a Bench of two Hon'ble Judges has doubted the correctness and referred the matter to a Bench of nine Hon'ble Judges. Subsequently a Bench of three Hon'ble Judges³ in the same case refused to make a reference.

b. In *State of U.P. v Jai Bir Singh*,

i. a Bench of three Hon'ble judge⁴ referred the matter to a larger bench by merely stating that the matter is of considerable public importance, to be decided by a larger Bench.

ii. a Bench of five Hon'ble Judges⁵ made a reference to a larger bench by a detailed judgement.

iii. a Bench of seven Hon'ble Judges⁶ has merely agreed with the views expressed by the five judge Bench.

7. That the five Judge Bench of this Hon'ble Court in *Jai Bir Singh*⁷ has doubted the correctness of the judgement of this Hon'ble Court in *Bangalore Water Supply* Case primarily on the ground that the views expressed by *Hon'ble Mr Justice Krishna Iyer* is on behalf of three Hon'ble Judges and is not a majority opinion, and that *Chief Justice MH Beg* delivered the judgement on the last day of his retirement and also did not have the benefit of the judgement of *Hon'ble Justice*

² *Coir Board v Indira Devai* (1998) 3 SCC 259.

³ *Coir Board v Indira Devai* (2000) 1 SCC 224.

⁴ *Vol. VB, Page 92*

⁵ *Vol VB, Page 94*

⁶ *Vol VB, Page 123*

⁷ *State of UP v Jai Bir Singh* (2005) 5 SCC 1.

Chandrachud and Justice Jaswant Singh. It is submitted that these are not valid reasons for reconsideration of a larger Bench decision.

VI. Principles to be applied for reconsideration of judgement

8. A binding precedent followed over a long period of time and reaffirmed in subsequent judgements should be reconsidered only under the following circumstances:

- a. there are *clear and compelling reasons* to do so,
- b. if there is a fair amount of unanimity that the previous decision is *manifestly wrong*,
- c. if it is demonstrated that the earlier decision was *erroneous beyond all reasonable doubt*,
- d. merely because a *different view is more reasonable* is not an adequate reason for reconsidering the earlier opinion, or
- e. if due to lapse of time or changed socio-economic scenario it is imperative that a fresh look is necessary.

9. It is submitted that none of the aforesaid circumstances have arisen requiring to revisit the decision in *Bangalore Water Supply*. Please see

- a. *NJAC Judgement*⁸ judgement by Hon'ble Mr Justice *Justice Lokur* page 572 para 660, 661
- b. *Waman Rao vs. Union of India*⁹ page 392 para 37
- c. *Shah Faesal vs. Union of India*¹⁰ page 10 para 17, 18

VII. Bangalore Water Supply is a unanimous view of seven judges and the opinions delivered on 07.04.1978 cannot be looked into

10. The conclusions recorded in paragraphs 140 to 143 of the judgement in *Bangalore Water Supply* is the unanimous view of all the seven Learned judges constituting the Bench.

⁸ *Supreme Court Advocates-on-Record-Association v Union of India*, (2016) 5 SCC 1

⁹ *Waman Rao v. Union of India*, (1981) 2 SCC 362.

¹⁰ *Shah Faesal v. Union of India*, (2020) 4 SCC 1.

- *Hon'ble Mr Justice Krishna Iyer* delivered majority on behalf of self, *Justice PN Bhagwati* and *Justice DA Desai* (Para 140-143)
- *Hon'ble Chief Justice MH Beg* agreed with the opinion of *Justice Krishna Iyer* (Para 146 and 169)
- *Hon'ble Mr Justice YV Chandrachud* on behalf of self, *Hon'ble Mr Justice Jaswant Singh* and *Hon'ble Mr Justice Tulzapurkar* expressed their broad agreement with the views expressed by *Hon'ble Mr Justice Krishna Iyer* (Para 170)
- After retirement of *Chief Justice Beg* on 21.02.1978, *Chief Justice YV Chandrachud*; and *Hon'ble Mr Justice Jaswant Singh* on behalf of self and *Hon'ble Mr Justice Tulzapurkar* delivered judgement on 07.04.1978 with certain dissent with *Hon'ble Mr Justice Krishna Iyer* .

11. It is submitted that no judgement can be delivered on behalf of the Court after retirement of any member of the Bench. A judgment delivered can be delivered "on behalf of the Court" only if, on the date of pronouncement, all the judges are lawfully in office and are competent to perform judicial functions. After the retirement of *Hon'ble Chief Justice MH Beg* on 21.02.1978, the seven judge Bench stood dissolved and no judgement or opinion of the Court could have been delivered by any other member of the Bench. Thus, it is submitted that the opinions delivered on 07.04.1978 by *Hon'ble Mr Justice Chandrachud* and *Hon'ble Mr Justice Jaswant Singh* are not judgments of the Supreme Court and cannot be looked into.

12. Merely because the judgement of *Bangalore Water Supply* was given on the date of retirement of *Hon'ble Chief Justice MH Beg*, it does lose the character of a binding precedent by a Bench of seven Hon'ble judges. On this analogy, large number of judgements would be liable to be reconsidered by a larger bench including the following:

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- a. *Aligarh Muslim University*¹¹ (7 judges) : please see observation of Hon'ble Mr Justice Dipankar Datta (Pg. 253, Pr. 382)
- b. *Tulsiram Patel*¹² (5 judges) : please see observation of Hon'ble Mr Justice MP Thakkar (Pg. 525, Pr. 178)
- c. *Mafatlal Industries Ltd*¹³ (9 Judges) : please see observation of Hon'ble Mr Justice B L Hansaria (Pg. 636, Pr. 111)

VIII. Majority judgment is the judgment of the Bench

13. In the alternative and without prejudice, it is submitted that this Hon'ble Court in the case of *Trimurthi Fragrances*¹⁴ has held that the majority opinion by a Bench is not the opinion of the judges who have delivered the majority opinion but is of the Bench constituting all the judges sitting on the Bench.

"19. The view of Bhat, J. was expressly concurred by Rao, J. (para 196) and Gupta, J. (para 227). There was no dissent to the view. In view of Article 145(5) of the Constitution of India concurrence of a majority of the Judges at the hearing will be considered as a judgment or opinion of the Court. It is settled that the majority decision of a Bench of larger strength would prevail over the decision of a Bench of lesser strength, irrespective of the number of Judges constituting the majority.

"28. Conclusion (1) is that a decision delivered by a Bench of largest strength is binding on any subsequent Bench of lesser or coequal strength. It is the strength of the Bench and not number of Judges who have taken a particular view which is said to be relevant. However, Conclusion (2) makes it absolutely clear that a Bench of lesser quorum cannot disagree or dissent from the view of law taken by a Bench of larger quorum. Quorum means the Bench strength which was hearing the matter.

¹¹ *AMU v. Naresh Agarwal*, (2025) 6 SCC 1

¹² *UOI v. Tulsiram Patel*, (1985) 3 SCC 398

¹³ *Mafatlal Industries Ltd. and Ors. vs. Union of India*, (1997) 5 SCC 536

¹⁴ *Trimurthi Fragrances (P) Ltd. v. State (NCT of Delhi)*, (2024) 20 SCC 709, Para 19, 28 and 29.

29. Thus, it has been rightly concluded that the numerical strength of the Judges taking a particular view is not relevant, but the Bench strength is determinative of the binding nature of the Judgment."

IX. New legislative regime under Industrial Relations Code, 2020

14. It is pertinent to note that all the Hon'ble judges in *Bangalore Water Supply* have held that the definition of the expression 'industry' under section 2(j) of the Industrial Disputes Act, 1947 is applicable only till a new law is made by the Parliament. *Please see*

- a. *Hon'ble Mr Justice Krishna Iyer* : "We speak, not exhaustively, but to the extent covered by the debate at the bar and, to that extent, authoritatively, until overruled by a larger Bench or **superseded by the legislative branch.**" (Para 139)
- b. *Hon'ble Chief Justice MH Beg* : "Hence, to artificially exclude State-run industries from the sphere of the Act, unless statutory provisions, expressly or by a necessary implication have that effect, would not be correct. **The question is one which can only be solved by more satisfactory legislation on it.** Otherwise, Judges could only speculate and formulate tests of "industry" which cannot satisfy all. Perhaps to seek to satisfy all is to cry for the moon." (Para 168)
- c. *Hon'ble Mr Justice Chandrachud* : "I consider, with great respect, that the problem is far too policy-oriented to be satisfactorily settled by judicial decisions. **Parliament must step in and legislate in a manner which will leave no doubt as to its intention.** That alone can afford a satisfactory solution to the question which has agitated and perplexed the judiciary at all levels." (Para 175)
- d. *Hon'ble Mr Justice Jaswant Singh* : "In view of the difficulty experienced by all of us in defining the true denotation of the term "industry" and divergence of opinion in regard thereto — as has been the case with this Bench also — we think, **it is high time that the legislature steps in with a comprehensive bill to clear up the fog and remove the doubts and set at rest once for all the controversy** which crops up

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from time to time in relation to the meaning of the aforesaid term rendering it necessary for larger Benches of this Court to be constituted which are driven to the necessity of evolving a working formula to cover particular cases." (Para 187)

15. The Parliament has enacted the Industrial Relations Code, 2020 and the expression 'industry' has been defined in section 2(p) which came into force on 21.11.2025. The Industrial Disputes Act, 1947 has been repealed vide section 104(1)(c). Thus, any interpretation of the expression industry under section 2(j) of the Industrial Disputes Act, 1947 would have bearing only on pending litigation between the workman and the employer and any restrictive meaning would affect the vested right of the workman.

16. It is submitted that the interpretation of the expression 'industry' in the case of *Bangalore Water Supply* is consistent with the object of the Industrial disputes Act, 1947 and does not require reconsideration.

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