

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 897 OF 2002

**IN THE MATTER OF:**

STATE OF U.P.

...PETITIONER

VERSUS

JAI BIR SINGH

...RESPONDENT

**Brief note of Propositions by Gopal Sankaranarayanan, Sr Advocate**

For the AITUC [IA 75400/2026] & Dr Mahendra Soni [IA 81729/2026]

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**I. The basis for the Reference to a Larger Bench stands removed**

- a. The only order that gives reasons for contemplating reconsideration of BWSSB is that of 5.5.2005<sup>1</sup> (From 5 to 7 Judges). Even the reference to 9 Judges on 2.1.2017<sup>2</sup> refers to the questions raised in the 2005 Order.
- b. Although the Judgement refers to the difficulty of accepting Beg J's opinion as concurring with that of Krishna Iyer J, and that of the impact of the former's imminent retirement, the overarching theme of the Reference is singular: The lack of legislation to provide certainty and clarity to the definition of industry. This can be gleaned from:
  - i. Para 17: No legislation or alternate forums for 23 years;
  - ii. Para 18: Citing the reference to 7 Judges of BWSSB which states that "if in the meantime Parliament does not act, this Court may have to illumine the twilight area of law";
  - iii. Paras 18-19: Citing Paras 3 & 145 of Iyer J who laments the legislature being "preoccupied with other pressing business";
  - iv. Paras 20-21: Referring the views of Beg J, Chandrachud J and Singh J, all of whom say that Parliament must step in;

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<sup>1</sup> Page 94 of Vol.5B

<sup>2</sup> Page 123 of Vol.5B

- v. Paras 25 & 39-40 & 44: On difficulties faced by the executive in keeping the amendment dormant for 23 years;
- vi. Para 35: The uncertainty due to the lack of clarity as highlighted in *Coir Board*;
- c. With the repeal of the Industrial Disputes Act 1947 by way of S.104 of the Industrial Relations Code 2020<sup>3</sup>, Section 2(j) which is the subject matter of the Reference has also ceased to exist. It now stands substituted by the definition of 'industry' in Section 2(p) of the 2020 Code<sup>4</sup>. As a consequence, any answer to this Reference would be largely academic, as most of the previous cases have already been answered one way or another by applying BWSSB. As many as 27 of these have been by the Supreme Court. [See **ANNEXURE-A**]
- d. As a result, not only has the *need* for the Reference ceased, but also the new Parliamentary phraseology has not arisen for interpretation here.

**II. WITHOUT PREJUDICE, if the Reference were to be entertained, there would need to be 2 Caveats**

- a. That the interpretation is limited to Section 2(j) of the Industrial Disputes Act 1947 and therefore applies only to the cases where the question has arisen prior to 21.11.2025;
- b. That the interpretation would have no bearing on Section 2(p) of the 2020 Code or the challenges to that provision which would be addressed separately;

**III. The object of the Labour Codes (old and new) subserves not only industrial harmony but also the interests of the workers**

- a. It is irrefutable that the aim of the Labour Codes is to ensure industrial harmony with both the employers and the employees in a position to cooperate for mutual benefit. Such a goal is in keeping with Articles 41-43A of the Constitution, and it is to the "industry" that the various allied welfare

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<sup>3</sup> Page 777 of Vol.4B read with the substitution at Page 783

<sup>4</sup> Page 701 of Vol.4B

statutes make reference. The rights of both the employers and employees under Articles 19(1)(g) and 21 are subserved by the Labour Codes.

- b. The 4 Labour Codes now enacted are on Wages (2019), Industrial Relations (2020), Social Security (2020) and Occupational Safety, Health and Working Conditions (2020). Each of these refer to the 'industry' for the purpose of defining the 'establishment' to which the respective Code would apply.
- c. It is relevant to note that the Second Schedule to the Industrial Code<sup>5</sup> lists out the multiple unfair labour practices on the part of the Employers, the Workers and the Trade Unions. Apart from the balance this achieves, the Code also provides for Discipline, Classification of Workers, Timings, Penalties and Adjudicatory processes.
- d. All of this being so, the approach that would be commended in considering whether an activity is "industry" for the purpose of Section 2(j) could be as follows:
  - i. To examine only the ACTIVITY to see whether it comes within the width of the words "undertaking", "calling" or "avocation" which are the widest phrases employed in the provision;
  - ii. To ignore WHO is carrying out the activity concerned, because that is not germane to the purpose of industrial regulation;
  - iii. To ignore the MOTIVE behind the activity as long as it is legal – a charitable activity cannot be permitted to be unregulated;
- e. As a result, it is perhaps the Judgement of Chandrachud, J at Paras 175 to 182 that provides the most logical and consistent approach in interpreting the provision, without the artificial exceptions carved out by Iyer, J.

**IV. ON QUESTION 1: The triple test has been accepted by Parliament and the Union of India, and is a reasonable test that has stood the test of time for S.2(j)**

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<sup>5</sup> Page 778 of Vol.4B

- a. At the outset, it may be noted that the Learned Attorney General for the Union of India has very fairly stated that the triple-test principles as laid down in BWSSB “does not call for any serious disagreement”<sup>6</sup>.
- b. The triple test laid down in BWSSB comprises *systematic activity, organized cooperation and the production of goods and services calculated to satisfy human wants and wishes*.
- c. A comparison of Paras 140 to 143 of the BWSSB judgement with Section 2(c) of the 1982 Amendment as well as Section 2(p) of the 2020 Code would reveal that Parliament has accepted all 3 limbs of the test almost verbatim. **[Annexure-C]**
- d. As a result, both the Legislature and the Executive have accepted the application of these principles, apart from the Judiciary having applied the same – the Supreme Court **[Annexure-A]** and the High Courts **[Annexure-B]** being consistent in doing so. The past 48 years have therefore crystallized this as *stare decisis*.
- e. It is well established that merely because another view is possible is not a reason for the Court to revisit its earlier interpretation of a provision of law. This would upset the principle of *stare decisis* and be against public interest.
  - Keshav Mills Co. Ltd. v. CIT, (1965) 2 SCR 908 at Para 23 [7]
  - Waman Rao v. Union of India, (1981) 2 SCC 362 at Para 38 [5J]

Relevant extracts from these judgements are at **Annexure-D**.

**V. ON QUESTIONS 2 & 3: Whether social welfare activities and schemes are of the Government and its instrumentalities is not germane to the definition in S.2(j). Equally, Sovereign functions are irrelevant to the nature of industry and cannot be a basis for distinction under S.2(j)**

- a. A glance at the table in **Annexure-A** would reveal that by applying the BWSSB judgement, activities as varied as that of the District Rural Development Agency, the Central Ground Water Board, a State Cooperative Training Institute and a Research Laboratory have all been held by the

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<sup>6</sup> Para 6(a), Page 5 of Vol. 1A

Supreme Court not to be industry merely because they are Governmental or involve a 'sovereign' function.

- b. The Constitution does not contemplate nationalistic fervour as a basis to make exceptions for the Government and its instrumentalities when applying legislation. Ever since the judgement of 9 Judges in *Supdt & Legal Remembrancer v. Corporation of Calcutta*, [1967] 2 SCR 170<sup>7</sup>, it is amply clear that all laws apply to the State unless it is expressly exempted [Subba Rao J at Para 24 & Bachawat J at Para 57]. Hence, when Section 2(j) makes no such allowance, it is perhaps inappropriate for the BWSSB judgement to have done so in Para 143(b). To that extent, this exemption is *per incuriam* the judgement in *Legal Remembrancer*. A note on the march of the law until the judgement of the 9-Judge Bench is annexed as **Annexure-E**.
- c. It is submitted that this distinction between Governmental/Non-Governmental or Sovereign/Non-Sovereign is entirely artificial and irrelevant for the purposes of Industrial legislation. When the relations between the employers and the workers are to be regulated to achieve harmonious cooperation, it is *manifestly arbitrary* to consider the nature of the employer. A list of the posts that would be rendered outside the scope of the Codes merely because of the so-called sovereign function being discharged is annexed here as **Annexure-F**. The absurd consequences would render such an exemption vulnerable to an attack on the anvil of Articles 14, 19 and 21 of the Constitution.
- d. Conversely, it is in fact critical for entities discharging sovereign functions to have a stable and harmonious environment. It is all the more important for them to fall within the definition of 'industry' than outside it.
- e. One other reason for rejecting any such exemption is the lack of an alternate remedy. There are no Tribunals or equivalent mechanisms available to redress the grievances of the workers from exempted industries and this was precisely the reason furnished by the Union

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<sup>7</sup> Page 145 of Vol.6

Government for not notifying the 1982 Amendment. This fact has been noted in Paras 8 and 28 of the 2005 Reference Order in the present case<sup>8</sup>.

IT IS THEREFORE SUBMITTED THAT THIS COURT MAY:

1. Declare the Reference as academic and no longer relevant;
2. Alternatively, consider the Questions Referred on 16.2.2026 with the 2 Caveats indicated above in Para II;
3. Approve the Triple Test as postulated in BWSSB;
4. Declare that there can be no artificial exemption carved out for Governmental entities or Sovereign Functions, and that Para 143(b) of the judgement is *per incuriam* Legal Remembrancer (1967);

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<sup>8</sup> Pages 104 and 115 of Vol.5B

# Annexure A

Chart on Supreme Court Judgements on 'Industry'

S. No.	Department / Organization	Citation	Whether held to be an Industry	Reason for holding it is NOT an Industry
1.	Municipality	D.N. Banerji v. P.R. Mukherjee, (1952) 2 SCC 619 - <b>5J</b>	Industry	-
2.	Municipality	Baroda Borough Municipality v. Workmen, (1956) 2 SCC 535 - <b>4J</b>	Industry	-
3.	Hospitals	State of Bombay v. Hospital Mazdoor Sabha, 1960 SCC OnLine SC 44 - <b>3J</b>	Industry	-
4.	Municipality	Corpn. of the City of Nagpur v. Employees, 1960 SCC OnLine SC 45 - <b>3J</b>	Industry	-
5.	College Pharmacy	Lalit Hari Ayurvedic College Pharmacy v. Lalit Hari Ayurvedic College Pharmacy Workers' Union, 1960 SCC OnLine SC 159 - <b>3J</b>	Industry	-
6.	Research Association	Ahmedabad Textile Industry's Research Assn. v. State of Bombay, 1960 SCC OnLine SC 152 - <b>3J</b>	Industry	-
7.	Office of Solicitors	National Union of Commercial Employees v. M.R. Meher, 1962 SCC OnLine SC 132 - <b>3J</b> <i>Note: Overruled in BWSSB</i>	Not an Industry	Absence of direct and essential association of capital and labour
8.	Agricultural Operations	Harinagar Cane Farm v. State of Bihar, 1963 SCC OnLine SC 106 - <b>3J</b>	Industry	
9.	University	University of Delhi v. Ram Nath, 1963 SCC OnLine SC 117 - <b>3J</b> <i>Note: Overruled in BWSSB</i>	Not an Industry	Teachers are not 'workmen' under S. 2(s)
10.	Club	Madras Gymkhana Club Employees' Union v. Gymkhana Club, 1967 SCC OnLine SC 51 - <b>3J</b> <i>Note: Overruled in BWSSB</i>	Not an Industry	Self-serving institutions not engaged in trade or any undertaking analogous to trade.

11.	Club	Cricket Club of India v. Bombay Labour Union, 1968 SCC OnLine SC 132 - <b>3J</b> <i>Note: Overruled in BWSSB</i>	Not an Industry	Self-serving institution for members
12.	Hospital	Safdarjung Hospital v. Kuldip Singh Sethi, (1970) 1 SCC 735 - <b>6J</b> <i>Note: Overruled in BWSSB</i>	Not an Industry	Safdarjung - Discharging functions of the Government. TB Hospital - dominant purpose is research and training. Kurji Hospital - wholly charitable
13.	Hospital	Management of Hospitals, Orissa v. Workmen, (1972) 4 SCC 216 - <b>2J</b> <i>Note: Overruled in BWSSB</i>	Not an Industry	Government function without profit motive
14.	Animal Welfare NGO	Bombay Pinjrapole, Bhuleshwar v. Workmen, (1971) 3 SCC 349 - <b>2J</b>	Industry	-
15.	FICCI	FICCI v. R.K. Mittal, (1972) 1 SCC 40 - <b>2J</b>	Industry	-
16.	Research Institute - ISI	Workmen v. Indian Standards Institution, (1975) 2 SCC 847 - <b>3J</b>	Industry	-
17.	Hospital	Dhanrajgirji Hospital v. Workmen, (1975) 4 SCC 621 - <b>2J</b> <i>Note: Overruled in BWSSB</i>	Not an Industry	No activity in the nature of trade
18.	a) Professions b) Education c) Charitable Institutions/ Non-profit economic activities d) Government Undertakings e) Research Institutes f) Clubs g) Cooperative Societies	Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 - <b>7J</b>	Industry	

19.	Bihar Khadi Gramudyog Sangh	Gopalji Jha Shastri v. State of Bihar, (1983) 2 SCC 4 - <b>2J</b>	Industry	-
20.	Clinic attached to a factory	Usha Rani Datta v. State Industrial Court, (1985) 3 SCC 148 - <b>2J</b>	Industry	-
21.	Municipality (Octroi Dept.)	Dhari Gram Panchayat v. Saurashtra Mazdoor Mahajan Sangh, (1987) 4 SCC 213 - <b>2J</b>	Industry	-
22.	Irrigation Department	Des Raj v. State of Punjab, (1988) 2 SCC 537 - <b>2J</b>	Industry	-
23.	Education Institution	A. Sundarambal v. Govt. of Goa, Daman and Diu, (1988) 4 SCC 42 - <b>2J</b>	Industry	- <i>Note: Teacher held not to be 'workman' as they have a noble mission</i>
24.	Real Estate Company	Karnani Properties Ltd. v. State of W.B., (1990) 4 SCC 472 - <b>2J</b>	Industry	-
25.	District Rural Development Agency	State of U.P. v. Arun Kumar Singh, 1995 Supp (4) SCC 241- <b>2J</b>	Not an Industry	Sovereign Function
26.	Central Ground Water Board	Union of India v. Jai Narain Singh, 1995 Supp (4) SCC 672- <b>2J</b>	Not an Industry	Sovereign Function
27.	Forest Department	Chief Conservator of Forests v. Jagannath Maruti Kondhare, (1996) 2 SCC 293- <b>3J</b>	Industry	-
28.	National Council for Cement & Building Materials	National Council for Cement & Building Materials v. State of Haryana, (1996) 3 SCC 206 - <b>2J</b>	Industry	-
29.	Government Rehabilitation Project	Dandakaranya Project, Koreput v. Workmen, (1997) 2 SCC 296 - <b>2J</b>	Industry	-
30.	Research Laboratory	Physical Research Laboratory v. K.G. Sharma, (1997) 4 SCC 257 - <b>2J</b>	Not an Industry	Results of research never sold for profit
31.	State run Cooperative	Himanshu Kumar Vidyarthi v. State of Bihar, (1997) 4 SCC 391- <b>2J</b>	Not an Industry	Appointment regulated by statutory rule

	Training Institute (driver/peon)			
32.	Irrigation Department	Executive Engineer (State of Karnataka) v. K. Somasetty, (1997) 5 SCC 434 <b>2J</b>	Not an Industry	Sovereign Function
33.	Telecommunications Department	GM, Telecom v. A. Srinivasa Rao, (1997) 8 SCC 767- <b>3J</b> <i>Note: Overrules Sub-Divisional Inspector of Post and Bombay Telephone Canteen</i>	Industry	-
34.	All India Radio/ Doordarshan	All India Radio v. Santosh Kumar, (1998) 3 SCC 237 - <b>2J</b>	Industry	-
35.	General Administration Department of Municipal Board	Samishta Dube v. City Board, Etawah, (1999) 3 SCC 14- <b>2J</b>	Industry	-
36.	Coir Board	Coir Board Ernakulam Kerala State v. Indira Devai P.S, (2000) 1 SCC 224- <b>3J</b> <i>Note: Overrules Coir Board (1998) 3 SCC 259</i>	Industry	-
37.	Agricultural Produce Market Committee	Agricultural Produce Market Committee v. Ashok Harikuni, (2000) 8 SCC 61 - <b>2J</b>	Industry	-
38.	Public Works Department	Engineer-in-Chief v. Shivanand, 2000 SCC OnLine SC 54- <b>2J</b>	Industry	-
39.	Forest Department	State of Gujarat v. Pratamsingh Narsinh Parmar, (2001) 9 SCC 713- <b>2J</b>	Not an Industry	Sovereign Function
40.	Residents Association providing personal services	Som Vihar Apartment Owners' Housing Maintenance Society Ltd. v. Workmen, (2002) 9 SCC 652- <b>2J</b>	Not an Industry	Domestic servies
41.	CPWD	Executive Engineer, CPWD v. Madhukar Purshottam Kolharkar, (2002) 9 SCC 622 - <b>2J</b>	Industry	-
42.	Public Works Department	State of Gujarat v. PWD Employees Union, (2002) 10 SCC 147- <b>3J</b>	Industry	-

43.	Municipality	Parmanand v. Nagar Palika, Dehradun, (2003) 9 SCC 290 - <b>2J</b>	Industry	-
44.	Fisheries Department	State of U.P. v. Charan Singh, (2015) 8 SCC 150- <b>2J</b>	Industry	-
45.	AIIMS	AIIMS v. Raj Singh, (2017) 12 SCC 803 - <b>2J</b>	Industry	-

## Annexure B

Chart on High Court judgements on 'Industry' - [Chronologically]

S. No.	Department	Post Held by Worker	Citation	Whether Industry or Sovereign Function
1.	Forest Department	Watchmen	Forest Development Corpn. v. Tulashiram Rama Khutade, 2025 SCC OnLine Bom 5489 - <b>DB</b> [No appeal to SC]	Industry
2.	Indian Army	Porter	General Officer Commanding v. Aijaz Ahmad Mir, 2025 SCC OnLine J&K 241- <b>DB</b> [No appeal to SC]	Sovereign Function
3.	Forest Department	Casual worker	Dilwar Singh v. Labour Court, 2025 SCC OnLine Utt 327- <b>SJ</b> [No appeal]	Industry
4.	Dharamshala for pilgrims of the Ambaji Temple	Labourer	Sardhavwali Dharmshala v. Velaji Kodarji Thakore, 2024 SCC OnLine Guj 2918 – <b>SJ</b>	Not an Industry
5.	Central Council of Homoeopathy	Stenographer	Central Council of Homoeopathy v. Vijay Singh, 2024 SCC OnLine Del 3798 – <b>SJ</b>	Industry
6.	Central Scientific Instruments Organization	Security Guard	Central Scientific Instruments Organization v. Central Govt., Industrial Tribunal-cum-Labour Court-II, 2024 SCC OnLine P&H 7591 – <b>SJ</b>	Industry

7.	Forest Department	Maali	Prabhagiya Nideshak Van v. Van. Evam Sangik Vanki Karmachari, 2024 SCC OnLine All 179- <b>SJ [no appeal]</b>	Industry
8.	National Institute of Immunology	Typist	National Institute of Immunology v. Vinod Kumar Gupta, 2023 SCC OnLine Del 3557- <b>SJ</b> [LPA-584/2023 enhanced compensation; SLP Diary No.13980/2024-dismissed]	Industry
9.	State Labour Institute	Chowkidar	Bhismaraj Meher v. State Labour Institute, (2023) 1 HCC (Ori) 233 – <b>DB</b> [SLP Diary No(s). 42949/2023 – Dismissed as withdrawn]	Not an Industry
10.	Bhartiya Chikitsa Kendriya Parishad/Central Council of Indian Medicine	Peon-cum-chowkidar	Bhartiya Chikitsa Kendriya Parishad v. Industrial Tribunal No-III, 2022 SCC OnLine Del 4560- <b>SJ</b> [No appeal]	Industry
11.	Bhabha Atomic Research Centre, Mumbai: Head, Water and Steam Chemistry Lab	Researcher	Scientific Officer (SF) v. P. Sukumar, 2022 SCC OnLine Mad 9571 – <b>SJ</b> [No appeal]	Industry
12.	Government Women and Children Hospital	Mess/canteen workers	Superintendent v. Labour Court, 2021 SCC OnLine Ker 16571- <b>SJ [no appeal]</b>	Industry
13.	Ministry of Labour and Employment, Govt. of India	Sweeper, Peon	Sapna v. Govt. of India, 2021 SCC OnLine Del 3800-SJ [LPA-431/2021 dismissed; No SLP]	Industry

14.	Forest Department	Coolie, Watermen	Range Forest Officer v. Nagamma, 2021 SCC OnLine Kar 16224 – <b>SJ</b> [no appeal]	Sovereign Function
15.	Controller General of Patents, Designs and Trademarks	Casual Labourers	Union of India v. Raju Kumar Shah, (2020) 1 HCC (Del) 644 – <b>SJ</b> [LPA-91/2020 dismissed as withdrawn]	Industry
16.	Forest Department	Coolie	Tamil Nadu Forest and Social Forest Department v. Radhakrishnan, 2019 SCC OnLine Mad 33771 – <b>SJ</b> [No appeal]	Sovereign Function
17.	Air Force Administrative College	Canteen	Air Force Administrative College v. Central Government Industrial Tribunal-cum-Labour Court, 2019 SCC OnLine Mad 12007- <b>SJ</b> [No appeal]	Industry
18.	Archeological Survey of India	Gardeners	Union of India v. Surendra Singh Rashtriya Adhayaksha, 2019 SCC OnLine All 4671- <b>SJ</b> [No appeal]	Industry
19.	Forest Department	----	Fateh Singh v. State of Rajasthan, 2018 SCC OnLine Raj 597 - <b>SJ</b> [No appeal]	Industry
20.	Rural Engineering Service	Peon	Executive Engineer Rural Engineering Services v. Ganesh Dutt Joshi, 2018 SCC OnLine Utt 1083 – <b>SJ</b> [no appeal]	Industry

21.	Department of Post and Telegraph	Senior Postmaster	Senior Post Master v. Ganga Ram, 2017 SCC OnLine All 6262 – <b>SJ</b> [No appeal]	Industry
22.	Central Leather Research Institute	Research Assistant	Central Leather Research Institute v. Lipika Mondal, 2017 SCC OnLine Cal 569 – <b>SJ</b> (FMA 1345/2018 appeal to DB dismissed)	Industry
23.	Irrigation Department	Workers	State of Bihar v. Krishna Pradhan, 2017 SCC OnLine Pat 2939- <b>DB</b> [No appeal to SC]	Industry
24.	Social Forestry Department	---	Deputy Director of Social Forestry v. Tarabai Chandrakant Kannure, 2016 SCC OnLine Bom 7998 – <b>SJ</b> [No appeal]	Industry
25.	Indian Army	Casual Labourers for Logistical Support	UOI v. Anil Kumar, 2015 SCC OnLine Del 9544 – <b>SJ</b> (LPA 491/2015 Appeal to DB dismissed) (SLP Diary No. 15887/2016 dismissed)	Industry
26.	Stamp Duty Valuation Organisation	Junior Clerk	State of Gujarat v. Santabhai Ratilal Vaghela, 2015 SCC OnLine Guj 47 – <b>DB</b> (No appeal to SC)	Industry
27.	Currency Note Press, Ministry of Finance	Employee Union	General Manager v. General Secretary, 2014 SCC OnLine Bom 2669 – <b>SJ</b> [No appeal]	Sovereign Function
28.	Irrigation Department	Chowkidar, Electrician	Pranaya Kumar Srivastava v. State of Jharkhand, 2014 SCC OnLine Jhar 2907 – <b>DB</b> [No appeal to SC]	Sovereign Function

29.	Department of Women & Child Development - Integrated Child Development Scheme	Anganwadi Worker	Dy. Chief Executive Officer v. Ratan Eknath Gund, 2014 SCC OnLine Bom 1625 – <b>SJ</b> [no appeal]	Industry
30.	Forest Department	Daily Wager	Deputy Conservator of Forests v. B.P. Maruthi, 2014 SCC OnLine Kar 12512 – <b>SJ</b>	Sovereign Function
31.	Forest Department	Chowkidar and Coupe Guard	Mahesh Rajak v. State of M.P., 2012 SCC OnLine MP 3307 – <b>DB</b> [SLP(C) No. 35932/2012- Dismissed]	Industry
32.	Indian Institute of Science	Clerk	B. Vijayakumari Pillai v. Management of Indian Institute of Science, 2012 SCC OnLine Kar 9012 – <b>SJ</b>	Not an Industry
33.	State Education Board	Peons	Maharashtra State Board of Secondary and Higher Secondary Education v. Sanjay Krishnarao Shrugare, 2008 SCC OnLine Bom 1659- <b>DB</b> [No appeal to SC]	Industry
34.	Punpun Flood Protection Division	Executive Engineer	Executive Engineer, Punpun Flood Protection Division v. Lal Babu Rai, 2007 SCC OnLine Pat 433 – <b>SJ</b> [no appeal]	Sovereign Function
35.	Office of the Commissioner of Higher Education	Sweeper	Hansaben Babulal Vaghela v. State of Gujarat, 2006 SCC OnLine Guj 358 – <b>SJ</b>	Sovereign Function
36.	Forest Department	Watchmen	State of Gujarat v. Aher Jaga Ramshi, 2006 SCC OnLine Guj 409- <b>SJ</b> [no appeal]	Industry
37.	Farakka Barage Project	Muster Roll Workers	Union of India v. Central Govt. Industrial Tribunal, 2005 SCC OnLine Cal 132 – <b>DB</b>	Industry

			[ No appeal to SC]	
38.	Irrigation Department	Chowkidars, Night Guard, Typists, Tracers, Helpers, etc.	State of Bihar v. Presiding Officer, Labour Court, 2005 SCC OnLine Jhar 582- <b>DB</b> [no appeal to SC]	Industry
39.	Tourism Department	Sweeper	Director, Tourism Department v. Industrial Tribunal, 2004 SCC OnLine Ker 153 – <b>DB</b> [no appeal to SC]	Industry
40.	Forest Department Environment Department Narmada Water Resources and Water Supply Department	Daily wager/ clerk, watchmen, etc.	Gujarat Forest Producers, Gatherers and Forest Workers Union v. State of Gujarat, 2004 SCC OnLine Guj 36 – <b>3J</b>	Not an Industry – Forest Department & Environment Department ( <i>each section of a department would have to be examined</i> )  Industry – Narmada Water Resources and Water Supply Department
41.	Public Works Department	Muster Roll Employee	State of Uttar Pradesh v. Deep Chandra, 2003 SCC OnLine All 1434- <b>DB</b> [no appeal to SC]	Industry
42.	Census Department	Tabulator	Md. Rajmohammad v. Industrial Tribunal-cum-Labour Court, Warangal, 2003 SCC OnLine AP 8 – <b>SJ</b> [WA- 270/2003 appeal to DB dismissed]	Sovereign Function
43.	National Remote Sensing Agency (NRSA)	Skilled, technical, operational and clerical personnel	National Remote Sensing Agency v. Additional Tribunal-cum-Additional Labour Court, Hyderabad, 2002 SCC OnLine AP 762 - <b>5J</b> [No appeal to SC]	Industry
44.	Forest Department	----	Haribhau son of Waghchaure v. State of Maharashtra, 2001 SCC OnLine Bom 1066 – <b>DB</b>	Sovereign Function

			<i>[No appeal to SC]</i>	
45.	Jawahar Rozgar Yojna	Junior Engineer	Vikas Adhikari v. Surendra Kumar Sharma, 1999 SCC OnLine Raj 679 – <b>SJ</b>	Not an Industry
46.	Horticulture Department	Mali / Beldar	Management of Horticulture, Deptt. of Delhi Admn. v. Trilok Chand, 1999 SCC OnLine Del 1012 - <b>SJ</b>	Industry
47.	Irrigation Department	Mazdoor/worker	Tungabhadra Board v. Easu, 1999 SCC OnLine Kar 263 – <b>DB</b> <i>[No appeal to SC]</i>	Industry
48.	Forest Department	Daily rated worker	Divisional Forest Officer v. Industrial Tribunal, 1997 SCC OnLine P&H 20 – <b>DB</b> <b>[SLP(C)-15263/1997 - dismissed]</b>	Industry
49.	Emergency Relief Undertakings	-	H.K. Makwana v. State of Gujarat, 1994 SCC OnLine Guj 48 – <b>3J</b>	Sovereign Function
50.	Department of Defense, Central Ordnance Depot	Employees	Union of India v. Presiding Officer, Central Government Industrial Tribunal, Jabalpur, 1994 SCC OnLine MP 144 - <b>SJ</b>	Industry
51.	Legal Aid Board	Clerk	Mahesh Bhargava v. State of Madhya Pradesh, 1993 SCC OnLine MP 34 - <b>DB</b> <i>[No appeal to SC]</i>	Industry
52.	Administrative Side of High Court	Routine grade assistants	High Court of Judicature v. Amod Kumar Srivastava, 1993 SCC OnLine All 31 - <b>3J</b> <i>[No appeal to SC]</i>	Sovereign Function

53.	Urban Development Authority	Drivers, assistant pump operators, motor mates and clerks etc	Management of Haryana Urban Development Authority v. Neelam Kumari, 1993 SCC OnLine P&H 438 – <b>DB</b> <i>(No appeal to SC)</i>	Industry
54.	Department of Industries, Mines, and Power	Work-charge Peon	Vinodrai N. Ratnotar v. State of Gujarat, 1992 SCC OnLine Guj 62 - <b>DB</b> <i>[No appeal to SC]</i>	Sovereign Function
55.	Bank Note Press, Dewas	1. Clerks, Stenographers, Section Officers, Deputy Accountants, Lower Division Clerks, Typists, etc. 2. Storekeepers, Deputy Works Engineers, Control Inspectors, etc. 3. Inspector Control	General Manager, Bank Note Press v. Chhattar Singh, 1991 SCC OnLine MP 8 - <b>DB</b> <i>[No appeal to SC]</i>	Industry
56.	Bombay Iron and Steel Labour Board	Inspector in the services of the Board	Husain Mithu Mhasvadkar v. Bombay Iron and Steel Labour Board, 1990 SCC OnLine Bom 309 – <b>SJ</b>	Sovereign Function
57.	Barrage Division, Irrigation Dept	Casual employees	Executive Engineer v. President, Work-charged and N.M.R. Employees' Union, 1988 SCC OnLine Ori 246 – <b>DB</b> <i>[No appeal to SC]</i>	Industry
58.	Mahila Samiti	Health assistant	Mahila Samiti v. State of Madhya Pradesh, 1988 SCC OnLine MP 8 – <b>DB</b> <i>[No appeal to SC]</i>	Industry
59.	Judicial Department of a State	Servant	Govindbhai Kanabhai Maru v. N.K. Desai, 1987 SCC OnLine Guj 58- <b>SJ</b>	Sovereign Function

60.	National Cadet Corps	Chowkidar	Director of the National Cadet Corps v. Nanu Jha, 1986 SCC OnLine Bom 512 – <b>SJ</b>	Industry
61.	Irrigation Department	Daily laborers on Muster Roll	P.W.D. Employees Union v. State of Gujarat, 1986 SCC OnLine Guj 172 - <b>DB</b> <b>[No appeal to SC]</b>	Industry
62.	Inspectorate of General Stores	Viewer	Purshottam Revachand Baviskar v. Union of India, 1986 SCC OnLine Bom 371 - <b>SJ</b>	Industry
63.	Office of the Deputy Director, Census Operations	Supervisor	Anand Prakash v. Union of India, 1983 SCC OnLine Raj 206 - <b>SJ</b>	Industry
64.	Forest Department, Agricultural Department, Health Department & Irrigation Department	Temporary Employees	Bijoy Kumar Bharti v. State of Bihar, 1983 SCC OnLine Pat 277 - <b>3J</b> <b>[No appeal to SC]</b>	Forest & Agriculture Department – Not an Industry Irrigation & Health Department - Industry
65.	Coir Board, Railways, Judicial Department (munsif), Health Services, State Electricity Board, Municipality, etc.	Temporary employees	Umayammal v. State of Kerala, 1982 SCC OnLine Ker 282 – <b>3J</b> <b>[No appeal to SC]</b>	Sovereign Function – Judicial Department Others - Industry
66.	Public Works Department	Sectional officer	State of Punjab v. Kuldip Singh, 1982 SCC OnLine P&H 185 ( <b>3J</b> ) <b>[No appeal to SC]</b>	Sovereign Function

<u>11.03.1947</u>	<u>21.02.1978</u>	<u>31.08.1982</u>	<u>21.11.2025</u>
<p>Section 2 (j) of Industrial Disputes Act, 1947</p> <p>“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;</p>	<p>Bangalore Water Supply &amp; Sewerage Board v. A. Rajappa, (1978) 2 SCC 213</p> <p><b>140.</b> “Industry’, as defined in Section 2(j) and explained in <i>Banerji</i>, has a wide import.  “(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale <i>prasad</i> or food), prima facie, there is an ‘industry’ in that enterprise.  (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.  (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.  (d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.”</p> <p><b>141.</b> Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.  “(a) ‘Undertaking’ must suffer a contextual and associational shrinkage as explained in <i>Banerji</i> and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I, although not trade or business, may still be ‘industry’ provided <i>the nature of the activity</i>, viz. the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of ‘industry’ undertakings, callings and services, adventures ‘analogous to the <i>carrying</i> on the trade or business’. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may</p>	<p>On enforcement of Section 2(c) of 1982 Amendment Act,1982  [Never notified]</p> <p>(j) “industry” means any systematic activity carried on by cooperation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—  (i) any capital has been invested for the purpose of carrying on such activity; or  (ii) such activity is carried on with a motive to make any gain or profit, and includes—  (a) any activity of the Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);  (b) any activity relating to the promotion of sales or business or both carried on by an establishment,  <u>but does not include—</u>  (1) any agriculture operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this</p>	<p>Section 2(p) of Industrial Relations Code, 2020</p> <p>“Industry” means any systematic activity carried on by co-operation between an employer and worker (whether such worker is employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—  (i) any capital has been invested for the purpose of carrying on such activity; or  (ii) such activity is carried on with a motive to make any gain or profit, but does not include —  (i) institutions owned or managed by organisations wholly or substantially engaged in any <b><u>charitable, social or philanthropic service</u></b>; or  (ii) any activity of the appropriate Government relating to the <b><u>sovereign functions</u></b> of the appropriate Government including all the activities carried on by the departments of the Central</p>

be dissimilar. It does not matter, if on the employment terms there is analogy.”

**142.** Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range off this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

“(a) The consequences are (i) professions, (ii) clubs, (iii) educational institutions, (iv) co-operatives, (v) research institutes, (vi) **charitable projects**, and (vii) other kindred adventures, if they fulfil the triple tests listed in I, cannot be exempted from the scope of Section 2(j).

(b) A restricted category of professions, clubs, co-operatives and even *gurukulas* and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or *ashramites* working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt — not other generosity, compassion, developmental passion or project.”

**143.** *The dominant nature test:*

“(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not ‘workmen’ as in

clause) and such other activity is the predominant one.

Explanation.—For the purposes of this sub-clause, “agricultural operation” does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; or

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or (5) khadi or village industries; or

(6) any activity of the Government relatable to the **sovereign functions** of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten;

Government dealing with defence research, atomic energy and space; or

(iii) **any domestic service;** or

(iv) any other activity as may be notified by the Central Government;

the *University of Delhi case* [*University of Delhi v. Ramlfath*, (1964) 2 SCR 703 : AIR 1963 SC 1873 : (1963) 2 Lab LJ 335] or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the *Corporation of Nagpur* will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status.

(b) Notwithstanding the previous clauses, **sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.**

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

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

## STARE DECISIS

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### **Keshav Mills Co. Ltd. v. CIT, (1965) 2 SCR 908 [7J]**

23. ...Mr Palkhivala has not disputed the fact that in a proper case, this Court has inherent jurisdiction to reconsider and revise its earlier decisions, and so, the abstract question as to whether such a power vests in this Court or not need not detain us. In exercising this inherent power, however, this Court would naturally like to impose certain reasonable limitations and would be reluctant to entertain pleas for the reconsideration and revision of its earlier decisions, unless it is satisfied that there are compelling and substantial reasons to do so. It is general judicial experience that in matters of law involving questions of construing statutory or constitutional provisions, two views are often reasonably possible and when judicial approach has to make a choice between the two reasonably possible views, the process of decision making is often very difficult and delicate. When this Court hears appeals against decisions of the High Courts and is required to consider the propriety or correctness of the view taken by the High Courts on any point of law, it would be open to this Court to hold that though the view taken by the High Court is reasonably possible, the alternative view which is also reasonably possible is better and should be preferred. In such a case, the choice is between the view taken by the High Court whose judgment is under appeal, and the alternative view which appears to this Court to be more reasonable; and in accepting its own view in preference to that of the High Court, this Court would be discharging its duty as a court of appeal. But different considerations must inevitably arise where a previous decision of this Court has taken a particular view as to the construction of a statutory provision as, for instance, Section 66(4) of the Act. When it is urged that the view already taken by this Court should be reviewed and revised, it may not necessarily be an adequate reason for such review and revision to hold that though the earlier view is a reasonably possible view, the alternative view which is pressed on the subsequent occasion is more reasonable. In reviewing and revising its earlier decision, this Court should ask itself whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised. When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations: —What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did

some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view? What would be the impact of the error on the general administration of law or on public good? Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief? These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions. These considerations become still more significant when the earlier decision happens to be a unanimous decision of a Bench of five learned Judges of this Court.

**Waman Rao v. Union of India, (1981) 2 SCC 362 [5J]**

38. While dealing with the subject of stare decisis, Shri H.M. Seervai in his book on Constitutional Law of India [ 2nd Ed (1975), Vol. I, pp. 59-61] has pointed out how important it is for judges to conform to a certain measure of discipline so that decisions of old standing are not overruled for the reason merely that another view of the matter could also be taken. The learned Author has cited an Australian case in which it was said that though the court has the power to reconsider its own decisions that should not be done upon a mere suggestion that some or all of the members of the later court may arrive at a different conclusion if the matter were res integra. [ The Tramways case (No. 1), (1914) 18 CLR 54, per Griffith CJ at p. 58] The learned Author then refers to two cases of our Supreme Court in which the importance of adherence to precedents was stressed. Jagannadhadas, J. said in the Bengal Immunity case [Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 2 SCR 603 : AIR 1955 SC 661 : (1955) 6 STC 446] that the finality of the decisions of the Supreme Court, which is the Court of last resort, will be greatly weakened and much mischief done if we treat our own judgments, even though recent, as open to reconsideration. B.P. Sinha, J. said in the same case that if the Supreme Court were to review its own previous decisions simply on the ground that another view was possible, the litigant public may be encouraged to think that it is always worthwhile taking a chance with the highest Court of the land. In ITO v.T.S.D. Nadar [AIR 1968 SC 623 : 68 ITR 252 : (1968) 2 SCR 33] Hegde, J. said in his dissenting judgment that the Supreme Court should not overrule its decisions except under compelling circumstances. It is only when the court is fully convinced that public interest of a substantial character would be jeopardised by a previous decision, that the court should overrule that decision. Reconsideration of the earlier decisions, according to the learned Judge, should be confined to questions of great public importance. Legal problems should not be treated as mere subjects for mental exercise. An earlier decision may therefore be overruled only if the court comes to the conclusion that it is manifestly wrong, not upon a mere suggestion that if the matter were res integra, the members of the later court may arrive at a different conclusion.

39. These decisions and texts are of high authority and cannot be overlooked. In fact, these decisions are themselves precedents on the binding nature of precedents.

### 1. The Rule

In *Director of Rationing and Distribution v. Corpn. of Calcutta*, (1961) 1 SCR 158 [51], it was held (4: 1 Majority of BP Sinha, CJ for 3, with Sarkar, J concurring) that the State is not bound by a statute, unless it is so provided in express terms or by necessary implication, by importing the same common law principle drawing from the principle from the king, or the sovereign, cannot be bound by the law it makes for the subjects.

An alternate argument that food distribution is a business activity of the State and hence, the statute must be made applicable was also rejected by holding that such an activity was an “*elementary duty of a sovereign*” and cannot be termed a business activity.

Wanchoo, J dissented and held that the said rule of interpretation cannot be accepted after the coming into force of the Constitution, abolition of all prerogatives and advent of rule of law.

### 2. The advent of the Exception:

- In *State of Bihar v. Sonabati Kumari*, (1961) 1 SCR 728 [51], N. Rajagopala Ayyangar, J. (Unanimous) held that the decision in *Corpn. of Calcutta* cannot apply when the words in the Statute MUST be held to be governing the State. While discussing the Rule, it was noted that the duty to obey the law is all the more imperative in the case of the State.
- In *State of W.B. v. Union of India*, (1964) 1 SCR 371 [61], BP Sinha, CJ, i.e. author of majority in *Corpn. of Calcutta* (for 5) himself carved out an exception to the Rule - while considering whether it applies to Constitutional Provisions, particularly Article 31. He held that the application of the Rule is subject to the “*the aim, object and scope of the statute to be read in its entirety*”. However, Subba Rao, J. dissented and held that the Rule MUST apply to Constitutional Provisions as well.
- N. Rajagopala Ayyangar, J. (Unanimous) in *State of Punjab v. Okara Grain Buyers' Syndicate Ltd.*, (1964) 5 SCR 387 [51] while following the decisions in *Sonabati Kumari* and *State of W.B.* held that the Rule has no application if it is the manifest from the terms of the statute that it was the intention of the State that it shall be bound, and otherwise the beneficent purpose of the statute would be wholly frustrated unless the State were bound.
- This was reiterated by P.B. Gajendragadkar, J. [Unanimous] in *V.S. Rice and Oil Mills v. State of A.P.*, (1964) 7 SCR 456 [51], while holding the Rule may also be used in favour of the State, i.e. it may be permitted to benefit from a Statute if the aim, object and scope of the statute makes it clear.

### 3. The abolishment to the Rule

In *Legal Remembrancer v. Corporation of Calcutta*, (1967) 2 SCR 170 [9J], it was held by 8:1 (Majority of Subba Rao, CJ, for 7, with Bachawat, J concurring) the Rule has not application in India after the advent of the Constitution. The Dissent of Wanchoo, J. in *Corpn. of Calcutta* was reiterated as laying down the correct law.

Further, as the High Court in the decision under challenge in the matter, had held that *Corpn. of Calcutta* only applies to “sovereign activities”, a question was framed whether the Rule’s application can be distinguished basis the activity. However, as the Rule itself was discarded, the said question was not answered. (See Para 24).

Relevant Extracts

- I. *Director of Rationing and Distribution v. Corpn. of Calcutta*, 1960 SCC OnLine SC 50 @ (1961) 1 SCR 158 [51]

**Issue on facts:** Whether the Director of Rationing and Distribution, Food Department, Government of West Bengal, was bound to obtain a license under the Calcutta Municipal Act, 1923?

**Issue on law:** Whether a statute has to expressly provide that it applies to the State in order to bind it?

- i. B.P. SINHA, C.J. (for himself and 3 Ors.)

7... It has been contended, and in our opinion rightly, that the provisions of the penal section neither by express terms nor by necessary implication are meant to be applied to Government....

8. It is well-established that the common law of England is that the King's prerogative is illustrated by the rule that the Sovereign is not necessarily bound by a statutory law which binds the subject. This is further enforced by the rule that the King is not bound by a statute unless he is expressly named or unless he is bound by necessary implication or unless the statute, being for the public good, it would be absurd to exclude the King from it....

10.... That was the law applicable to India also, as authoritatively laid down by the Privy Council in the case referred to above. That decision was rightly followed by the Calcutta High Court as stated above. That would be the legal position until the advent of the Constitution.

11. The question naturally arises : **whether the Constitution has made any change in that position** ? There are no words in the Constitution which can be cited in support of the proposition that the position has changed after the republication form of Government has been adumbrated by our Constitution... The immunity of Government from the operation of certain statutes, and particularly statutes creating offences, is based upon the fundamental concept that the Government or its officers cannot be a party to committing a crime - analogous to the 'prerogative of perfection' that the **King can do no wrong**. Whatever may have been the historical reason of the rule, it has been adopted in our country on grounds of public policy as a rule of interpretation of statutes. That this rule is not peculiar or confined to a monarchical form of Government is illustrated by the decision of the Supreme Court of U.S.A. in the case of United States of America v. United Mine Workers of America (1947) 330 U.S. 258 ... The decision was based on the rule that a general statute imposing restrictions does not impose them upon the Government itself without a clear expression or implication to that effect...

12... far from the Constitution making any change in the legal position, it has clearly indicated that the laws in force continue to have validity, even in the new set up, except in so far as they come in conflict with the express provisions of the Constitution. No such provision has been brought to our notice. That being so, we are definitely of the opinion that the **rule of interpretation of statutes that the State is not bound by a statute, unless it is so provided in express terms or by necessary implication, is still good law.**

13. But Mr. Chatterjee further contended, alternatively, that even if it were held that the Government as a sovereign power may have the benefit of the immunity claimed, it is not entitled to that immunity when it embarks upon a business and, in that capacity, becomes subject to the penal provisions of the

statute equally with other citizens. This question was not raised below and has not been gone into by the High Court, nor is it clear on the record, as it stands, that the Food Department of the Government of West Bengal, which undertook rationing and distribution of food on a rational basis had embarked upon any trade or business. In the absence of any indication to the contrary, **apparently this Department of the Government was discharging the elementary duty of a sovereign to ensure proper and equitable distribution of available food-stuffs with a view to maintaining peace and good Government.** Therefore, the alternative argument suggested by Mr. Chatterjee has no foundation in fact.

ii. **A.K. SARKAR J.**

23... whatever its origin, the rule has long been regarded only as a rule of construction. It has been widely used to exempt executive governments from the operation of statutes quite apart from protecting prerogative rights of the British Crown strictly so called. It has been held reasonable to presume that the legislature intended that executive governments are not to be bound by statutes unless made bound expressly or by necessary implication. It would be equally reasonable to do so in our country even under the present set up for the presumption has all along been raised in the past and especially as the applicability of the rule can no longer be made to depend on the prevailing form of government. **In countries with a republican form of government, the Sovereign would be the State, and its acts, which can only be the acts of its executive limb would be, under the rule exempt from the operation of its statutes.** Whether the royal prerogative as understood in England, exists in the present day India is not a question that can arise in applying what is a pure rule of construction of statutes.

iii. **K. N. Wanchoo, J.**

31. I have had the advantage of reading the judgments prepared by my Lord the Chief Justice and my brother Sarkar J. I agree with their conclusion but my reasons are different. I therefore proceed to state my reasons for coming to the same conclusion.

32. The most important question thus is, whether the rule of construction derived from the royal prerogative in England can still be said to apply in India after January 26, 1950. **If this rule of construction based on the royal prerogative does not apply, it would necessarily follow that the ordinary rule of construction, namely, that the State would also be bound by the law like anybody else unless it is expressly excluded or excluded by necessary implication, would apply.** Now the rule of construction based on the royal prerogative is a survival from the medieval theory of divine right of Kings and the conception that the sovereign was absolutely perfect, with the result that the common law of England evolved the maxim that "*the King can do no wrong*". **In course of time however the royal prerogative in England was held to have been created and limited by the common law and the sovereign could claim no prerogatives, except such as the law allowed nor such as were contrary to Magna Carta or any other statute or to the liberties of the subject.** The courts also had jurisdiction to inquire into the existence or extent of any alleged prerogative. If any prerogative was disputed, they had to decide the question whether or not it existed in the same way as they decided any other question of law....

33. The question of royal prerogative was also considered in Attorney-General v. De Keyser's Royal Hotel Limited [1920] A.C. 508 It was held therein that even where there was prerogative it could be curtailed by a statute, if the statute dealt with something which before it could be affected by the prerogative, inasmuch as the Crown was a party to every Act of Parliament. Thus in modern times, **the**

**royal prerogative is the residue of discretionary or arbitrary authority which at any time is legally left in the hands of the Crown and is recognised under the common law of England.** Two

things are clear from this modern conception of royal prerogative, namely, (1) that there must be a Crown or King to whom the royal prerogative attaches, and (2) that the prerogative must be part of the common law of England...

34. After January 26, 1950, **when our country became a democratic republic and the King ceased to exist**, it is rather otiose to talk of the royal prerogative. It is also well to remember that the English common law as such never applied to India, except in the territories covered by the original side of the three Chartered High Courts, namely, Calcutta, Bombay and Madras, (see Kahirodebihari Datta v. Mangobinda Panda I.L.R. [1934] Cal. 841 though sometimes rules of English common law were applied by Indian courts on grounds of justice, equity and good conscience. It seems to me therefore that to apply to Indian statutes a construction based on the royal prerogative as known to the common law of England now when there is no Crown in this country and when the common law of England was generally not even applicable, (except in a very small part), would be doing violence to the ordinary principle of construction of statutes, namely, that only those are not bound by a statute who are either expressly exempted or must be held to be exempt by necessary implication.

35. In our country the Rule of Law prevails and our Constitution has guaranteed it by the provisions contained in Pt. III thereof as well as by other provisions in other Parts. **It is to my mind inherent in the conception of the rule of Law that the State, no less than its citizens and others, is bound by the laws of the land. When the King as the embodiment of all power - executive, legislative and judicial - has disappeared and in our republican Constitution, sovereign power has been distributed among various organs created thereby, it seems to me that there is neither justification nor necessity for continuing the rule of construction based on the royal prerogative.** It is said that though the King has gone, sovereignty still exists and therefore what was the prerogative of the King has become the prerogative of the sovereign. There is to my mind a misconception here. It is true that sovereignty must exist under our Constitution; but there is no sovereign as such now. In England, however, the King is synonymous with the sovereign and so arose the royal prerogative, But in our country it would be impossible now to point to one person or institution and to say that he or it is the sovereign under the Constitution. A further question may arise, if one is in search of a sovereign now, whether the State Government with which one is concerned here is sovereign in the same sense as the English King (though it may have plenary powers under the limits set under our Constitution). This to my mind is another reason why there being no King or sovereign as such now in our country, the rule of construction based on the royal prerogative can no longer be invoked.

39. Further it appears to me that the royal prerogative where it deals with substantive rights of the Crown as against its subjects, as, for example, the priority of Crown debts over debts of the same nature owing to the subject, stands on a different footing from the royal prerogative put forward in the present case, which is really no more than a rule of construction of statute passed by Parliament. Where, for example, a royal prerogative dealing with a substantive right has been accepted by the Courts in India as applicable here also, it becomes a law in force which will continue in force under Art. 372(1) of the Constitution. But where the royal prerogative is merely a rule of construction of statutes based on the existence of the Crown in England and for historical reasons, **I fail to see why in a democratic republic, the courts should not follow the ordinary principle of construction that no one is exempt from the operation of a statute unless the statute expressly grants the exemption or the exemption arises by necessary implication.** On the whole therefore I am of opinion that the proper rule of construction which should now be applied, at any rate after January 26,

1950, is that **the State in India whether in the center or in the States is bound by the law unless there is an express exemption in favour of the State or an exemption can be inferred by necessary implication....**

40. .... In these circumstances it must be held that by necessary implication the State is exempt from the penal provisions contained in s. 488 (now s. 537). I would therefore allow the appeal, set aside the judgment of the High Court and restore the order of acquittal by the Magistrate.

II. *State of Bihar v. Sonabati Kumari*, 1960 SCC OnLine SC 20 @ (1961) 1 SCR 728 [5I]

**Issue on law:** Whether State is liable to be proceeded against under Order 39 Rule 2(3) of CPC, when it wilfully disobeys an order of temporary injunction passed on nomine against it.

i. N. RAJAGOPALA AYYANGAR, J. [UNANIMOUS]

12. The arguments addressed to us by Mr. Lal Narayan Sinha who appeared for the appellant State... (4) That a State is not bound by a Statute unless it is named therein expressly or by necessary implication, and as there is no mention of a State in specific terms in O. 39, r. 2(3), a State cannot, as such, be proceeded against of disobedience of an order of Court.

23. Learned Counsel urged that clause (3) discarded the use of the expression "defendants" employed in clause (1) which would have included the "State" in cases where the State was a party defendant, and had designated the party against whom the injunction order could be enforced as "the person guilty of the disobedience" and with a further provision empowering the Court to order the detention of "such person" in Civil prison. **The word "person" it was at the best a natural expression, which in the absence of compelling indication, was not apt to include "a State" and particularly so in the light of the rule of construction approved by this Court in The Director of Rationing v. Corporation of Calcutta 1960CriLJ1684....**

24. We feel wholly unable to accept the construction suggested of the expression "person guilty of disobedience" in the clause. The reason for the variation in the phraseology employed in cls. (1) and (3) of O. 39, r. 2 is not far to seek. Under the law when an order of injunction is passed, that order is binding on and enforceable not merely against the persons on nomine impleaded as a party to the suit and against whom the order is passed but against "the agents and servants, etc." of such a party. If such were not the law, orders of injunction would be rendered nugatory, by their being contravened by the agents and servants of parties....

34. Before concluding, we consider it proper to draw attention to one aspect of the case. **It is of the essence of the rule of law that every authority within the State including the Executive Government should consider itself bound and obey the law.** It is fundamental to the system of polity that India has adopted and which is embodied in the Constitution that the Courts of the land are vested with the powers of interpreting the law and of applying it to the facts of the case which are properly brought before them. If any party to the proceedings considers that any Court has committed any error, in the understanding of the law or into application resort must be had to such review or appeals as the law provides. When once an order has been passed which the Court has jurisdiction to pass, it is the duty of all persons bound by it to obey the order so long as it stands, as it would tend to the supervision of orderly administration and civil Government, if parties could disobey orders with impunity. **If such is the position as regard private parties, the duty to obey is all the more**

**imperative in the case of Governmental authorities, otherwise there would be a conflict between one breach of the State polity, viz., the executive and another breach - the Judicial. If disobedience could go unchecked, it would result in orders of Courts ceasing to have any meaning and juridical power itself becoming mockery.** When the State Government obeys a law, or gives effects to an order of a Court passed against it its not doing anything which detracts from its dignity, but rather, invests the law and the Courts with this dignity which are their due, which enhances the prestige of the executive Government itself, in democratic set-up....

### III. *State of W.B. v. Union of India*, 1962 SCC OnLine SC 27 @ (1964) 1 SCR 371 [6I]

**Issue on law:** Whether Parliament is competent to make a law authorising the Union of India to acquire land which are vested in States? Whether the State of West Bengal is a “sovereign authority”?

#### i. **B.P. SINHA, C.J.** (for himself and 5 Ors.)

21... Diverse reasons were suggested at the Bar in support of the plea that the State property was not subject to the exercise of legislative powers of the Parliament:...

(7) Unless a law expressly or by necessary implication so provides, a State is not bound thereby. This well recognised rule applies to the interpretation of the Constitution. Therefore in the absence of any provision express or necessarily implying that the property of the State could be acquired by the Union, the rights claimed by the Union to legislate for acquisition of State property must be negated.

69. Re. (7) In *Director of Rationing and Distribution v. The Corporation of Calcutta* 1960 Cri LJ 1684, it was held by this Court by a majority.....

But the rule that the **State is not bound, unless it is expressly named or by necessary implication in the statute is one of interpretation. In considering the true meaning of words or expression used by the Legislature the Court must have regard to the aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire Statute; it must compare the clause with the other parts of the law,** and the setting in which the clause to be interpreted occurs. Again in interpreting a Constitutional document provisions conferring legislative power must normally be interpreted liberally and in their widest amplitude. Vide - Navinchandra Mafatlal v. The Commissioner of Income-tax, Bombay City [1954] 26 ITR 758 (SC), Entry 42 in List III does not, prima facie, contain any indication that the expression "Property" therein is to be understood in any restricted sense : nor do the other provisions of the Constitution for reasons already stated suggest a restricted meaning. The ground of absolute sovereignty of the States which may not be interfered with by taking property vested in the States by Parliamentary legislation has no legal basis. Again denial of power to the Union Parliament to legislate on allotted topics of legislation, in a manner affecting the property vested in a State, may render Parliamentary legislation virtually ineffective. **No provision in the Constitution suggesting a restricted meaning of the word 'property' in the context of legislative power has been brought to our notice. Regard being had to the extensive powers which the Union Parliament and Executive have for using State property, in the larger public interest, the restriction suggested that the power does not extend to the acquisition of property of the States does not seem to be contemplated.** By making the requisite declarations under Entries 54 of List I, the Union Parliament assumed power to regulate mines and minerals and thereby to deny to all agencies not under the control of the Union, authority to work the mines. It could scarcely be imagined that the Constitution makers while intending to confer an exclusive power to work mines

and minerals under the control of the Union, still prevented effective exercise of that power by making it impossible compulsorily to acquire the land vested in the States containing minerals. The effective exercise of the power would depend - if such an argument is accepted - not upon the exercise of the power to undertake regulation and control by issuing a notification under Entry 54, but upon the will of the State in the territory of which mineral bearing land is situate. Power to legislate for regulation and development of mines and minerals under the control of the Union, would by necessary implication include the power to acquire mines and minerals. Power to legislate for acquisition of property vested in the States cannot therefore be denied to the Parliament if it be exercised consistently with the protection afforded by Art. 31.

ii. **K. SUBBA RAO, J. (DISSENT)**

84... the expression "person" in Art. 31 will not include "State". There is nothing in the said Article which compels me to give a strained meaning particularly when the Article is consistent with the recognized concept of Eminent Domain and fits in squarely with the scheme of fundamental rights. But it is said that if a State cannot be a "person", a corporation or a company will have to be excluded from its scope. There is **no definition of the expression "person" in the Constitution; but it is defined in the General Clauses Act, 1897, as including any company or association or body of individuals, whether incorporated or not. Though this definition is an enlargement of the natural meaning of the expression "person", even the extended meaning does not include the State.** Anyhow the question whether the said expression takes in a corporation or not, does not call for a decision in this case. In this context two decisions of this Court may usefully be referred to. In Director of Rationing and Distribution v. The Corporation of Calcutta 1960CriLJ1684, it was held that "the rule of interpretation of statutes that the State is not bound by a statute unless it is so provided in express terms, or by necessary implication, is still good law". **Though that rule has been laid down in the context of a statute, there is no reason why a different principle should apply in the construction of the Articles of the Constitution.** If that rule of interpretation is applied to Art. 31(2) of the Constitution, it will have to be held that, as the said rule does not in terms or by necessary implication provide for the acquisition of State property, a State property cannot be the subject-matter of the said rule. Reliance is placed upon another judgment of this Court in The State of Bihar v. Rani Sonabati Kumari MANU/SC/0002/1960 : [1961]1SCR728, in support of the contention that the expression "person" embraces a State. There, the decision was that when the State disobeyed the order of injunction issued by the court, the said order could be enforced against the State in the manner prescribed by O. XXXIX, r. 2(3), of the Code of Civil Procedure. A plaintiff may apply to the court for a temporary injunction to restrain a defendant from committing the injury complained of...

This Court, on a construction of cls. (1) and (3) of r. 2 of O. XXXIX of the Code of Civil Procedure held that the expression 'person' in r. 2(3) has been employed compendiously to designate everyone in the group "Defendant, his agents, servants and workmen" and not for excluding any defendant against whom the order of injunction has primarily been passed. But at the same time, this Court made it clear that the provision for detention does not apply to the State; and this could only be because the State is not a "person" who could be detained. The decision is based upon the phraseology of the two clauses of O. XXXIX, r. 2, of the Code of Civil Procedure and does not lay down as a general proposition that the expression "person" wherever it appears shall include a "State".

IV. *State of Punjab v. Okara Grain Buyers' Syndicate Ltd.*, 1963 SCC OnLine SC 125 @ (1964) 5 SCR 387 [51]

**Issue on law:** Whether State Government is 'a person' against whom a debt can be claimed under the Displaced Persons (Debts Adjustment) Act, 1951?

i. N. RAJAGOPALA AYYANGAR, J. [Unanimous]

13. The judgment of the Full Bench of the High Court negating this contention is an elaborate one, but its reasoning may be summarised as resting on the following postulates : (1) unless there was an explicit exemption of the State from the operation of any particular statute, the State was bound by its provisions, (2) that the object of the Displaced Persons (Institution of Suits) Act of 1948 and the present Act was to supplement the Independence (Liabilities) Order, 1947 and to furnish the adjectival relief to the substantive rights conferred by it against the State, (3) that unless the construction contended for by the respondent was accepted, most persons who had claims against the State of the type contemplated by para 8(3) of the Independence (Liabilities) Order 1947 would be remediless — a circumstance which would be repugnant to the basic idea underlying the Indian Independence (Rights, Property and Liabilities) Orders, 1947. The learned Advocate-General contested the correctness of each one of these and submitted to us an elaborate argument which may be summarised thus:

(1) This Court has, in *Director of Rationing and Distribution v. Corporation of Calcutta* [(1961) 1 SCR 158] accepted as correct the Rule of construction adopted in the U.K. that the State is not bound by a statute unless it is so provided in express terms or by necessary implication. Applying this principle of interpretation to the terms of the Act, far from the State being expressly named as being bound, there are indications arising from the nature and description of the persons brought within the scope of the enactment which clearly exclude the State and the obligations of the State from its purview.....

14. We shall now proceed to deal with the submissions in the order in which we have set them out. The learned Advocate-General is right when he says that this Court in *Director of Rationing and Distribution v. Corporation of Calcutta* [(1961) 1 SCR 158] has accepted the continued applicability of the principle of construction of statutes laid down by the Privy Council in *Province of Bombay v. Municipal Corporation of the city of Bombay* [(1946) LR 73 IA 271]....

15....In the view we take of the construction of the provisions of the Act before us, in the light of the principles of construction formulated by Lord Du Parcq, we do not consider it necessary to examine whether there are any further limitations, qualifications or exceptions to the Rule as applied to Indian statutes as have been accepted in the United Kingdom which have been set out and expounded at pages 438-43 of the sixth edition of Craies on Statutes. **We shall therefore proceed to examine the provisions of the Act on the footing that the test for determining whether the Government is bound by a statute is whether it is expressly named in the provision which it is contended binds it, or whether it "is manifest that from the terms of the statute, that it was the intention of the legislature that it shall be bound", and that the intention to bind would be clearly made out if the beneficent purpose of the statute would be wholly frustrated unless the Government were bound.** We might here point out that a question such as has now arisen has been before this Court on at least two earlier occasions. In *State of Bihar v. Rani Sonabati Kumari* [(1961) 1 SCR 728] the question raised was whether Government was bound by the provisions of Order 39 Rule 2(3) of the Civil Procedure Code where the expression used to designate the party subject to be proceeded against was "person". This Court held that in the context of the other provisions of the Order and the other

relevant law, the word “person” was intended to include in its connotation the State where it was a party against whom any order or injunction had been passed. A similar question also arose in ***State of West Bengal v. Union of India*** [ Suit No. 1 of 1961 (Not yet reported) decided on December 21, 1962] filed in this Court against the Union of India and others. Sinha, C.J. speaking for the majority observed:

“The rule that the State is not bound, unless it is expressly named or by necessary implication in the statute is one of interpretation. In considering the true meaning of words or expression used by the Legislature the Court must have regard to the aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs.”

16. We shall therefore proceed to consider the terms of the Act in the light of these principles and see whether debts due to displaced persons by the Government are within its scope, by reason either of the words used or by reason of the same being necessitated by the policy, purpose or provisions of the Act.

20. Before, however, we do so, it is necessary to advert to an argument addressed to us by the respondent that the expression “person” used in the Act must be held to include the State, inasmuch as not merely natural persons but artificial and juristic entities like companies and corporations as well as unincorporated bodies are expressly brought within the Act....

21. The learned Advocate-General submitted to us an elaborate and erudite argument as to whether the State was a corporation in any sense, the conclusion which he desired us to draw being that though the State was a body politic, it had not the characteristics of a corporation. In this connection he referred us to various writers on Public International Law and on Political Science and to certain decisions of the American courts. We do not, however, feel called upon to examine these submissions and pronounce upon their correctness in view of the conclusion we have reached on a construction of the provisions of the Act. We would, however, make two observations : (1) that the **mere fact that certain artificial entities like corporations are brought within the scope of the Act, would not by itself rebut the presumptive rule of construction that the State is not bound by a statute unless it is brought within its scope expressly or by necessary implication**, (2) it would not be correct to say that the State is not a constitutional or even juristic entity for the reason that it does not partake the characteristics of or satisfy in whole, the definition of a corporation. **The State is an organised political institution which has several of the attributes of a corporation**. Under Article 300 of the Constitution, the Government of the Union and the Government of a State are enabled to sue and be sued in the name of Union of India and of the Government of the State, as the case may be. It would not, therefore be improper to speak of the Union and the State as constitutional entities which have attributes defined by the Constitution.

V. ***V.S. Rice and Oil Mills v. State of A.P.***, 1964 SCC OnLine SC 46 @ (1964) 7 SCR 456 [51]

**Issue of fact:** Validity of orders issued under Section 3 of the Madras Essential Articles Control and Requisitioning (Temporary Powers) Act, 1949.

**Issue of law:** Whether the statute can be interpreted in a manner which permits the State Government to seek protection under it even though it is not expressly covered under it?

i. **P.B. Gajendragadkar [Unanimous]**

8. Mr. Setalvad for the appellants contend that in construing s. 3, we ought not to concentrate on the words used in s. 3 in isolation, but must look at the said section along with the other provisions of the Act. The rule of harmonious construction, he urges, requires that we must so construe all the provisions of the Act as to avoid any conflict or repugnancy between them. So construed, section 3, according to him, cannot be said to confer power on the respondent to enhance the tariff rate chargeable against the appellants in respect of the supply of energy made by respondent to them. The whole scheme of the Act indicates clearly that the power to regulate the supply of an essential article which has been conferred on the State Government has to be applied in regard to transaction between citizens and citizens and cannot be applied to an essential article which the State itself supplies. It would be odd, he suggests, if the State Government is given the power to issue a notified order regulating the rates at which it should supply energy which it itself produces. Therefore, the dealings by the State Government in the matter of supply of energy to the consumers should be deemed to be outside the provisions of s. 3, and that would make the impugned orders invalid.

9. The question as to whether the State Government would be bound by the provisions of legislative enactments passed by the State Legislature has sometimes led to difference in judicial opinion; but the decision of this Court in the Director of Rationing and Distribution v. The Corporation of Calcutta and Ors. 1960CriLJ1684 must be taken to have settled this question. The effect of the majority decision rendered in that case is to recognise the validity of the rule of interpretation of statutes enunciated by the Privy Council in Province of Bombay v. Municipal corporation of the City of Bombay 73 I.A. 271 and that **rule is that the State is not bound by a statute unless it is so provided in express terms or by necessary implication.** In applying this rule, it is obviously necessary that the Court must attempt to ascertain the intention of the Legislature by considering all the relevant provisions of the statute together and not concentrating its attention on a particular provision which may be in dispute between the parties. **If, after reading all the relevant provisions of the statute, the Court is satisfied that by necessary implication the obligation imposed by the statute should be enforced against the State, that conclusion must be adopted.** If there are express terms to that effect, there is, of course, no difficulty. In dealing with this vexed question, **sometimes it is necessary also to enquire whether the conclusion that the State is not bound by the specific provision of a given statute, would hamper the working of the statute, or would lead to the anomalous position that the statute may lose its efficacy, and if the answer to either of these two questions indicates that the obligation imposed by the statute should be enforced against the State, the Court would be inclined to infer by necessary implication that the State, in fact, is bound by the statute.**

10. Where, however, **the question is not so much as to whether the State is bound by the statute, but whether it can claim the benefit of the provision of a statute, the same rule of construction may have to be applied.** Where the statute may be for the public good, and any claiming the benefit conferred on it by its provisions the State may allege that it is serving the public good, it would still be necessary to ascertain whether the intention of the legislature was to make the relevant provisions applicable to the State. This position is also established by the decision of the Privy Council in Province of Bombay 73 I.A. 271 and it still continues to be a law in this country.

11. Incidentally, we may add that where the Crown seeks to take advantage of a statute and urges that though it is not bound by the statute, it is at liberty to take advantage of it, English Law does not easily entertain such a plea, though there are observations made in some judicial pronouncements to the contrary. As Halsbury points out, "it has been said that, unless it is expressly or impliedly prohibited from doing so, the Crown may take advantage of a statute notwithstanding that it is not bound

thereby." Having made this statement, Halsbury has added a note of caution by saying that "there is only slender authority for this rule, and since both the rule and such authority as does exist have also been doubted, the rule cannot, perhaps, be regarded as settled law [Halsbury's Laws of England, Vol. 36, p. 432, para 654]".

12. To the same effect is the comment made by Maxwell when he quotes with approval the view expressed by Sir John Simon that the decisions which recognise the right of the Crown to take advantage of a statutory provisions "start with a passage in an unsuccessful argument of a law officer which was not even relevant to the case before the court, but which has been taken out by a text-writer and repeated for centuries until it was believed that it must have some foundation [Maxwell on Interpretation of Statutes, 11th Ed. p. 136]".

13. Therefore, in construing s. 3 of the Act, we cannot permit the respondent to rely upon the artificial rule that since the respondent claims a benefit under s. 3, that construction should be adopted which supports such a claim. Thus, **the position is that when we construe s. 3, we must adopt the usual rule of construction; we must not read s. 3 in isolation, but must consider it in its proper setting and must have due regard for the other provisions of the Act, and its general scheme and purpose.**

#### VI. *Legal Remembrancer v. Corporation of Calcutta*, 1966 SCC OnLine SC 42 @ (1967) 2 SCR 170 [9]

**Issues on law:** The **four questions** (*not expressly framed*) that were dealt with in the judgement are as follows:

- a) Discussion and consideration on the validity of the conflicting views in *Director of Rationing and Distribution vs. Corporation of Calcutta* [(1961) 1 SCR 158] 5J Bench.  
→ Paras 7 and 8 (*J. Subba Rao*) || Para 28, 36 to 39 (*J. J.C. Shah*)
- b) How far and to what extent the common law of England relating to the prerogatives of the Crown has been accepted as the law of our country?  
→ Paras 9 to 21 || Para 29 to 32 (*J. J.C. Shah*) || Para 52 to 54 (*J. R.S. Bachawat*)
- c) Whether the Rule of Construction on "*that prerogatives cannot be affected or parted with by the crown, except by express statutory authority*" is the law of land after the Constitution came into force?  
→ Para 22 (*J. Subba Rao*) || Para 41 to 46 (*J. J.C. Shah*)
- d) Whether this Court should adopt the rule of construction adopted by the Privy Council in interpreting statute vis-à-vis the Crown?  
→ Paras 23 and 24 || Para 35 (*J. J.C. Shah*)

**NOTE:** *J. R S. Bachawat's* findings are mainly on the point that- In India, the Crown never enjoyed the general prerogative of overriding a statute and standing outside it. Such a right is not indigenous to India, nor is it a necessary incident of sovereignty. [Paras 47 to 50]

#### i. **Subba Rao, CJ for himself and 6 others**

2. The relevant facts are simple and are not in dispute. The State of West Bengal was carrying on the trade of a daily market at 1, Orphanganj Road, Calcutta, without obtaining a licence as required under Section 218 of the Calcutta Municipal Act, 1951 (West Bengal Act 33 of 1951) hereinafter called "the Act". The Corporation of Calcutta filed a complaint against the State of West Bengal in the Court of the Presidency and Municipal Magistrate, Calcutta, under Section 541 of the Act for contravening the provisions of Section 218 thereof. Under

Section 218 of the Act, every person who exercises or carries on in Calcutta any trade, shall take out a licence and shall pay for the same such fee as is mentioned in that behalf in Schedule IV to the Act. Admittedly for the year 1960-61, the Government of West Bengal did not take out a licence under the said section but carried on the said trade. The main contention of the Government was that the State was not bound by the provisions of the Act. The learned Magistrate, accepting the said contention, acquitted the State. On appeal, the High Court of Calcutta held that the State was carrying on the business of running a market and, therefore, it was as much bound as a private citizen to take out a licence. It distinguished the decision of this Court in *Director of Rationing and Distribution v. Corporation of Calcutta* [(1961) 1 SCR 158] on the ground that the said decision was concerned with the sovereign activity of the State. In the result the State of West Bengal was convicted under Section 537 of the Act. Section 537 appears to be a mistake for Section 541 and sentenced to pay a fine of Rs 250, with the direction that when realized, it should be paid to the Corporation. Hence the present appeal.

3. Learned Advocate-General of West Bengal raised before us the following points : (1) The State is not bound by the provisions of a statute unless it is expressly named or brought in by necessary implication; (2) the said principle equally applies to sovereign and non-sovereign activities of a State; and Mr N.S. Bindra, learned Counsel appearing for the Attorney-General raised before us the third point, namely, this Court has no power under the Constitution to review its earlier judgment.

7. We shall now consider the validity of the conflicting views. The common law of England is clear on the subject. In *Halsbury's Laws of England*, in Part 5 of the Chapter on "Constitutional Law" under the heading "The Royal Prerogative", the Royal prerogatives are enumerated and their limitations are given. In para 464 it is stated:

"The general rule is that prerogatives cannot be affected or parted with by the Crown, except by express statutory authority."

The prerogative right can be taken away by law because the law is made by the Crown with the assent of the Lords and the Commons. It can be taken away only by law to which the Crown is a party. Whether a particular statute has taken away such right pertains to the domain of the rule of construction. The relevant rule of construction evolved by judicial decisions in England may be stated thus:

"At all events, the Crown is not reached except by express words or by necessary implication in any case where it would be ousted of an existing prerogative or interest."

It is said much to the same effect in *Maxwell's Interpretation of Statutes*, 11th Edn., at p. 129, thus:

"It is presumed that the legislature does not intend to deprive the Crown of any prerogative, right or property, unless it expresses its intention to do so in explicit terms, or makes the inference irresistible."

*There is an essential distinction between a substantive law and a rule of construction* and that is well expressed by Craies in his book "*On Statute Law*", at p. 10, thus:

"A rule of law, e.g., the Rule against Perpetuities or the Rule in *Shelley's case* (abolished in 1925), exists independently of the circumstances of the parties to a deed, and is inflexible and paramount to the intention expressed in the deed. A rule of law cannot be said to control the construction of a statute, inasmuch as a British statute is itself part of the supreme law of the land and overrides any pre-existing rules with which it is inconsistent. A rule or canon of construction, whether of will, deed or statute, is not inflexible, but is merely a presumption in favour of a particular meaning in case of ambiguity. This was well expressed by Bowen, L.J. in *L.N.W. Ry. v. Evans* : [(1893) 1 Ch 16, 27] "These canons do not override the language of a statute where the language is clear : they are only guides to enable us to understand what is inferential. In each case the Act of Parliament is all powerful, and when its meaning is unequivocally expressed the necessity for rules of construction disappears and reaches its vanishing point."

9. The next question is, how far and to what extent the common law of England relating to the prerogatives of the Crown has been accepted as the law of our country? Nothing has been placed before us to show that the entire body of the common law pertaining to prerogatives was accepted as the law throughout India. India at the relevant time comprised Provinces and Native States. As Bhashyam Ayyangar, J., pointed out in *Bell v. Municipal Commissioners for the City of Madras* "the prerogatives of the Crown in India a country in

which the title of the British Crown is of a very mixed character may vary in different provinces, as also in the Presidency towns as distinguished from the mofussil. The determination, with anything like legal precision, of all the prerogatives of the British Crown in India is by no means an easy task". It is well-known that the Common law of England was applied as such in the original sides of the High Courts of Calcutta, Bombay and Madras, and that in the mofussil courts the principles embodied in the common law were invoked in appropriate cases on the ground of justice, equity and good conscience. It cannot, therefore, be posited that either the entire body of common law of England relating to prerogatives of the King or even the rule of construction as forming part of that law was accepted as law in every part of the country. It has to be established whenever a question arises as to what part of the common law was accepted as the law in a particular part of the country.

16. The legislative practice in India establishes that the various legislatures of the country provided specifically exemptions in favour of the Crown whenever they intended to do so indicating thereby that they did not rely upon any presumption but only on express exemptions, *see*, for instance, Section 74 of the Contract Act, Section 9 of the Specific Relief Act, Section 90 of the Indian Registration Act, Section 2(a) and (b) of the Indian Easements Act, The Crown Grants Act 15 of 1895, Sections 295 (proviso), 356(b) and 411 and 616(a) of the Code of Civil Procedure (old), Section 212 (proviso) of the Indian Companies Act, Section 20 (proviso) of the Sea Customs Act, 1878, Section 1(4)(i) of the Indian Ports Act, Section 3, proviso (1) of the Indian Stamps Act, 1899, and Section 3 of the India Act 11 of 1881 etc. What is more, Act 11 of 1881 empowered the Governor-General-in-Council by order to prohibit the levy by a Municipal Corporation of any specified tax payable by the Secretary of State for India and to direct the Secretary of State for India to pay to the Municipal Corporation in lieu of such tax some definite amounts. This Act was a pointer against the contention that there was a presumption in favour of the Crown that a statute was not binding on it. It is true that there are other Acts where there are specific provisions to the effect that the provisions of the Acts shall be binding on the Government : see Section 10 of the Arbitration Act (Act 10 of 1940), Section 116 of the Oil Field Regulation and Development Act (Act 53 of 1948). Subsequent to the making of the Constitution also there were Acts where such a provision was found. There is no firm legislative practice based upon the said presumptive rule of construction. Different statutes adopted different devices to achieve their desired results. The legislative practice, therefore, does not support the contention that in India the said rule of construction was accepted. It only shows that wherever an exemption was intended to be given to the Government it was expressly mentioned and wherever there might have been any doubt of the liability of the Government, it was expressly made liable. The rule of construction was not statutorily recognised either by incorporating it in different Acts or in any General Clauses Act; at the most, it was relied upon as a rule of general guidance in some parts of the country.

21. To sum up : some of the doctrines of common law of England were administered as the law in the Presidency towns of Calcutta, Bombay and Madras. The Common Law of England was not adopted in the rest of India. Doubtless some of its principles were embodied in the statute law of our country. That apart, in the mofussil, some principles of Common Law were invoked by courts on the ground of justice, equity and good conscience. *It is, therefore, a question of fact in each case whether any particular branch of the Common Law became a part of the law of India or in any particular part thereof. The aforesaid rule of construction is only a canon of interpretation, it is not a rule of substantive law.* Though it was noticed in some of the judgments of the Bombay High Court, the decisions therein mainly turned upon the relevant statutory provisions. One decision even questioned its correctness. There is nothing to show that it was applied in other parts of the country on the ground of justice, good conscience and equity. In Madras, it was not considered to be a binding rule of law, but only as a simple canon of construction. In Calcutta there was a conflict : one Bench accepted the construction and the other rejected it. The Privy Council gave its approval to the rule mainly on the concession of advocates

and that decision related to Bombay City. *It is, therefore, clear that the said rule of construction was not accepted as a rule of construction throughout India and even in the Presidency towns it was not regarded as inflexible rule of construction. In short it has not become a law of the land.*

22. Let us now proceed on the assumption that it has been accepted as a rule of construction throughout India. This leads us to the question whether the said rule of construction is the law of the land after the Constitution came into force. Under Article 372, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority. Can it be said that the said canon of construction was a "law in force" which can only be amended by a legislature? *Under Explanation (1) to the said Article, the expression "law in force" shall include a law passed or, made by a legislature or other competent authority in the territory of India before the commencement of the Constitution.* It has been held by this Court that the said expression includes not only enactments of the Indian Legislatures but also the Common Law of the land which was being administered by the courts in India. (See *Director of Rationing and Distribution v. Corporation of Calcutta* and *V.S. Rice and Oil Mills v. State of Andhra Pradesh*. *But it is not possible to hold that a mere rule of construction adopted by English courts, and also by some of the Indian courts to ascertain the intention of the legislature was a law in force within the meaning of this term. There is an essential distinction between a law and a canon of construction. This distinction between law and the canon of construction has been noticed by us earlier and we have held that a canon of construction is not a rule of law. We are not concerned here with the statutory rules of interpretation. We are, therefore, of the opinion that a rule of construction is not a "law in force" within the meaning of Article 372.*

23. The next question is whether this Court should adopt the rule of construction accepted by the Privy Council in interpreting statute vis-a-vis the Crown. *There are many reasons why the said rule of construction is inconsistent with and incongruous in the present set-up we have no Crown, the archaic rule based on the prerogative and perfection of the Crown has no relevance to a democratic republic; it is inconsistent with the rule of law based on the doctrine of equality. It introduces conflicts and discrimination.* To illustrate: (1) State 'A' made a general Act without expressly making the Act binding on the said State. In the same State States 'B', 'C' and 'D' and the Union have properties. Would the rule of construction apply only to the properties of State 'A' or to the properties of all the States and the Union? (2) The Central Act operated in different States; the rule of construction was accepted in some States and rejected in other States. Is the Central Act to be construed in different States in different ways? (3) Acts in general terms might be made in different States — States where the said rule of construction was accepted and the States where it was not so accepted. Should different States construe the General Acts in different ways, some applying the presumption and some ignoring it?

24. There is, therefore, no justification for this Court to accept the English canon of construction, for it brings about diverse results and conflicting decisions. **On the other hand, the normal construction, namely, that the general Act applies to citizens as well as to State unless it expressly or by necessary implication exempts the State from its operation, steers clear of all the said anomalies. It prima facie applies to all States and subjects alike, a construction consistent with the philosophy of equality enshrined in our Constitution. This natural approach avoids the archaic rule and moves with the modern trends.** *This will not cause any hardship to the State.* The State can make an Act, if it chooses, providing for its exemption from its operation. Though the State is not expressly exempted from the operation of an Act, under certain circumstances such an exemption may necessarily be implied. Such an Act, provided it does not infringe

fundamental rights, will give the necessary relief to the State. We, therefore, hold that the said canon of construction was not “the law in force” within the meaning of Article 372 of the Constitution and that in any event having regard to the foregoing reasons the said canon of construction should not be applied for construing statutes in India. **In this view it is not necessary to express our opinion on the question whether the aforesaid rule of construction would not apply to the trade activities of the State, even if it applied to its sovereign activities.**

ii. **I C Shah, J. (Dissenting)**

35. *The Union of India now includes territory of the former Indian States in which the law as originally existing and which the courts are enjoined to apply may have been somewhat different. But that is not peculiar to the application of the rule of interpretation which was adopted by the Courts in British India that the State shall not be deemed to be bound by an enactment unless it is expressly named or by clear intendment included in the statute. Even in respect of matters of personal law, procedure and jurisdiction of the courts and in other matters where uniform statutes do not apply differences do arise and must be determined according to the law and jurisdiction inherited by the courts administering justice. But the present case concerns the administration of the law in the town of Calcutta which has for nearly 250 years been governed by the English common law as adopted by the various Acts, Regulations and finally by the Letters Patents. It may also be necessary to observe that we are not called upon to decide whether all the prerogatives of the British Crown have been incorporated in our system of law. Some of those are so wholly inconsistent with the system of law personal and common in India, that they have not been held applicable, e.g. the rule of English law incapacitating aliens from holding real property to their own use, and transmitting it by descent or devise has never been introduced in India so as to create forfeiture of lands held in Calcutta or the mofussil by an alien and devised by will for charitable purposes. Mayor of the City of Lyons v. East India Company : the English law of *felo de se* and forfeiture of goods does not extend to a Hindu committing suicide : Advocate-General of Bengal v. Ranee Surnomoye Dossee.*

42. *The rule of interpretation was, as already stated, a settled rule and was law in force in the territory of India within the meaning of Article 372 of the Constitution. I am unable to agree with the contention that a rule of interpretation is not “law in force” within the meaning of Article 372. There is no warrant for holding that a rule of interpretation which is incorporated in a statute e.g. The Indian Succession Act, or the General Clauses Act is law in force, and not a rule which was enunciated by the highest court in the realm. The circumstance that a rule of interpretation is a rule for determination of intention of the legislature and for its application requires determination of facts and circumstances outside the statute will not make it any the less a rule of law. Acceptance of the proposition that a decision of the highest judicial tribunal before the Constitution is law does not involve the view that it is immutable. A statute may be repealed, and even retrospectively, it would then cease to be in operation : a decision which in the view of this Court is erroneous may be overruled and may cease to be regarded as law, but till then it is law in force. It may be pertinent to bear in mind that it was never seriously argued before us that the judgment of the Judicial Committee which affirmed the view expressed in a long course of decisions was erroneous in the circumstances then prevailing.*

iii. **R. S. Bachawat, J. (Concurring)**

47. On the subject of the royal prerogative regarding statutes Chitty in his book on *Prerogatives of the Crown* at p. 382 said “The general rule clearly is, that though the King may avail himself of the provisions of any Acts of Parliament, he is not bound by such as do not particularly and expressly mention him”. It has been said that the reason of the rule is that “it is inferred prima facie, that the law made by the Crown, with the assent of the Lords and the Commons, is made for the subjects, and not for the Crown” per Alderson, B. in *A.G. v. Bonaldson*. **Two rules follow from the proposition that the law is prima facie made for subjects and not for the Crown : (i) the Crown is not bound by a statute save by express words or by necessary implication, (ii) that the Crown may take advantage of a statute, though not bound by it, unless expressly or impliedly prohibited from doing so. This Court categorically rejected the second rule in V.S. Rice and Oil Mills v. State of Andhra Pradesh and held that the State cannot be permitted to rely upon the artificial rule that the State can take advantage of a statute though not bound by it. I think that this Court should have refused to recognise the first rule also.**

49. At Common law, no proceedings, civil or criminal, were maintainable against the Sovereign in person for, it was said, that as the courts were her own they could have no jurisdiction over her, see *Halsbury's Law of England*, Vol. 7, Article 544, p. 249. In India, the government did not enjoy a general immunity from suits and legal proceedings, see *Peninsular and Oriental Steam Navigation Company v. Secretary of State for India*. The subjection of the Government to suits where it was liable to be sued before the Constitution is preserved by Article 300 of the Constitution. Though orders of mandamus and injunction cannot issue to the Crown in England, see *Halsbury's Laws of England*, 3rd Edn. Vol. II, Article 25 and 184 PP. 16 and 98, such orders can issue to Government under Articles 32 and 226 of the Constitution. See also *State of Bihar v. Sonavati Kumari. Province of Bombay v. Khusaldas Advani*. In England the King by his prerogative may sue in what court he pleases, see *Craies on Statute law*, 6th Edn., p. 435. *The prerogative of choice of courts by the Crown never applied in India*. The State can sue only in a court competent to entertain the suit under the general law. In England it was the prerogative of the Crown not to pay costs in any judicial proceeding, see *Craies on Statute Law*, 6th Edn, p. 432. *But this prerogative was never recognised in India. The State pays and receives costs like a private individual.*

52. As pointed out already under the Indian law the Crown could not claim a general exemption from statutes on the ground of the prerogative. But there is high authority for the view that such an exemption is allowed to the Crown in England on the basis of a rule of construction. In *Madras Electric Supply Corporation v. Boardland* [(1955) AC 667, 685] at p. 685 Lord Macdermott said that the rule that in an Act of Parliament general words shall not bind the Crown to its prejudice unless by express words or by necessary implication has long been regarded as a rule of construction. This rule has a wide sweep, and is not limited to cases where the prerogative right or property of the Crown is in question. It protects the Crown whenever general words in a statute may operate to its prejudice. See *Broom's Legal Maxims*, 10th Edn., pp. 39-40, Glanville L. Willams' *Crown Proceedings*, p. 48 (f. n.). *A review of the decided cases shows that until the decision of the Privy Council in the Province of Bombays case [(1946) LR 73 IA 271] this wide rule of construction had not obtained a firm foothold in India. In Verubai v. Collector of Nasik [ILR 7 Bom 552], the Bombay High Court held that the Government was bound by Article 167 of Schedule II of the Indian Limitation Act, 1877. Westropp, C.J. said:*

“The legislature in passing the Limitation Act of 1871, which is applicable to this case, where it intends that Government should have a longer period than the subject, has been careful expressly to say so, as for instance, in Article 150 of Schedule II, where the period assigned to suits brought by the Secretary of State is sixty years from the time of the accruer of the cause of action; but the legislature makes no difference

between Government and its subjects in the case of appeals or applications — see *Govind Lakshman v. Narayan Moreshvar* [11 Bom HCR 111] ”.

In *Hiranand Khushiram v. Secretary of State for India* [(1934) ILR 58 Bom 635] , Beaumont, C.J. and Rangnekar, J. applied the strict English rule of construction and held that since the Crown was not named either expressly or by necessary implication in Sections 305, 489 and 491 of the City of Bombay Municipal Act, 1888, the Crown was not bound by those sections. Soon thereafter, the same learned Judges held in *Secretary of State for India v. Municipal Corporation of Bombay* [37 Bom LR 499] , that the Crown was bound by Section 212 of the City of Bombay Municipal Act, 1888 by necessary implication, though not expressly named therein. In *Province of Bombay v. Municipal Corporation for the City of Bombay* [ILR (1944) Bom 95] , Beaumont, C.J. and Rajadhayaksha, J. held that Sections 222(1) and 265 of the City of Bombay Municipal Act, 1888 by necessary implication bound the Crown. They refused to follow the dictum of Day, J. in *Corton Local Board v. Prison Commissioner* [(1904) 2 KB 165] that the test of necessary implication binding the Crown involves that the legislation is unmeaning unless the Crown is bound. They said:

“...if it can be shown that legislation cannot operate with reasonable efficiency, unless the Crown is bound, that would be a sufficient reason for saying that the Crown is bound by necessary implication.”

*This decision was reversed by the Privy Council on appeal in Province of Bombay case [(1946) LR 73 IA 271] . The Privy Council rejected the test laid down by the Bombay High Court. They held that the strict English rule of construction exempting the Crown from the operation of statutes applied in the case of Indian legislation. The parties appearing before the Privy Council concurred in accepting this view. The attention of the Privy Council was not drawn to Bell's case and the propriety of applying the English rule to Indian legislation was not considered.*

Lord Du Parcq said:

“If it can be affirmed that, at the time when the statute was passed and received the royal sanction, it was apparent from its terms that its beneficent purpose must be wholly frustrated unless the Crown were bound, then it may be inferred that the Crown has agreed to be bound.”

They held that the Crown was not bound by Sections 222(1) and 265 of the City of Bombay Municipal Act, 1888 and an inference of necessary implication binding the Crown could not be drawn from certain express references to the Crown in other parts of the same Act and from the exemption of the Crown in a later general Act since such provisions are often inserted *ex abundanti cautela*. It is to be noticed that in several earlier decisions the Bombay High Court had drawn an inference of necessary implication binding the Crown in other sections of the same Act. *Moreover, except the Bombay High Court, no other High Court held that the English Rule of Crown exemption from statutes applied to India. Even in Bombay, some of the Judges doubted the applicability of the rule to Indian conditions. The imposition of the strict rule of construction by the Privy Council decision was received very unfavourably in India. In Corporation of Calcutta v. Sub Postmaster, Dharamtala, the Calcutta High Court felt bound to follow the Privy Council decision, and held that the Government was not bound by the provisions of the Calcutta Municipal Act, 1923. Mookerjee, J., however, said:*

“Had the question been *res integra* and had it been open to us to consider the question untrammelled by a decision of the Judicial Committee we might have considered the reasonableness and propriety of applying the principles as enunciated by the English courts and also how far they should be applied to Indian conditions. For some years past the position of the Crown with regard to liability and procedure has been considered by the lawyers in England as being antiquated and absurd as contrasted with that of ordinary individuals and reform in this respect has been considered to be long overdue.”

*In Corporation of Calcutta v. Director of Rationing and Distribution [AIR 1955 Cal 282] , the Calcutta High Court refused to follow the Privy Council decision and held that the State was bound by Section 386(1)(a) of the Calcutta Municipal Act, 1923. This decision was reversed in Director of Rationing and Distribution's case [AIR 1955 Cal 282] and a majority of a Bench of this Court held that the law was correctly laid down in the Province of Bombay*

case [(1946) LR 73 IA 271] and continued to apply in this country even after the Constitution came into force, and the State was not bound by Section 386(1)(a) of the Calcutta Municipal Act, 1923. Wanchoo, J. dissented and held that the rule laid down by the Privy Council did not apply to the construction of Indian statutes after the Constitution came into force. Later decisions of this Court disclose a tendency to relax and soften the rigour of this rule. In *Sri Venkata Seetaramanjaneya Rice and Oil Mills v. State of Andhra Pradesh* this Court held that an inference of necessary implication binding the State may be drawn if “the conclusion that the State is not bound by the specific provision of a given statute would hamper the working of the statute, or would lead to the anomalous position that the statute may lose its efficacy”. In other words, the Court was inclined to revive the Bombay heresy rejected by the Privy Council.

55. *The Director of Rationing and Distribution case [AIR 1955 Cal 282]* left open the question whether the State could claim immunity from the provisions of a statute with regard to its trading or commercial activities. But the executive power of the State extends to the carrying on of a trade or business, see Article 298 of the Constitution. On a question of construction of a statute, no rational distinction can be made between the trading and non-trading activities of the State. If the State is not bound by a statute, it would seem that it is not so bound in respect of all its activities.

57. I am therefore of the opinion that the rule that the Government is not bound by a statute unless it is expressly named or bound by necessary implication does not prevail in this country and the decisions in the Province of Bombay case [(1946) LR 73 IA 271] and Director of Rationing and Distribution case [AIR 1955 Cal 282] and the subsequent decisions applying the rule to the construction of Indian Acts should not be followed. The imposition of this artificial rule has been harmful to our body politic. We have power to reconsider our previous decisions, see *Bengal Immunity Company Ltd. v. State of Bihar [(1955) 2 SCR 603]*. This is a fit case where we should exercise this power. If the rule of common law controlling the operation of a statute on the ground of the prerogative applied to India, it would be a law in force before the Constitution and would continue to be in force by virtue of Article 372 of the Constitution. It would be the law in force because it would limit and control the operation of the existing Indian Acts. But we have ample power to say that this rule was not in force in India and the Indian law was not correctly laid down by the Privy Council in the Province of Bombay case [(1946) LR 73 IA 271] and the decisions which followed it.

# Annexure F

## ABSURDITIES ARISING FROM THE SOVEREIGN FUNCTION EXCLUSION

Excluding entire organisations/departments which perform “sovereign functions” from the ambit of “industry” is arbitrary, unreasonable and irrational because several individuals within these organisations do not perform any core sovereign functions. If they worked at the SAME JOBS and PERFORMED THE SAME FUNCTIONS at any other organization, they would come within the ambit of the ID Act.

### Illustratively:

S. No.	Organisation/Department	Posts
1.	Defence Research Institutes	Gardeners, cleaners, drivers, canteen staff, doormen, lift operators.
2.	Military clubs	Cooks, waiters, gardeners, cleaners, groundkeepers, porters
3.	Ministry of Defence (civilian)	Drivers, lift operators, canteen staff, cleaners.
4.	Ministry of Home Affairs	Drivers, lift operators, canteen staff, cleaners.
5.	Forest Department	Ticketing employees, safari drivers, employees of lodges owned by Forest Dept. for tourism, daily wagger, coolie, water-man, chowkidar
6.	Census Bureau	Tabulator, driver, canteen staff, lift operator, maintenance staff.
7.	Department of Mines	Driver, canteen staff, lift operator, maintenance staff
8.	Irrigation Department	Chowkidar, electrician, sweeper