IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

1. Civil Appeal No. 5101 of 2002 – Chief Conservator of Forests v. Mari Gowda
2. SLP(c) No. 4327 of 2008 – Asst. Executive Engineer, Zilla Panchayat v. Rajanna
3. SLP(c) No. 4328 of 2008 – Asst. Executive Engineer, Zilla Panchayat v. Puttaswamy
4. SLP(c) No. 4329 of 2008 – Asst. Executive Engineer, Zilla Panchayat v. Gangadhar
5. SLP(c) No. 3107 of 2008 – Asst. Executive Engineer, Zilla Panchayat v. N. Nagaraju

FURTHER WRITTEN SUBMISSIONS ON BEHALF OF
THE STATE OF KARNATAKA
(Per Mr. Sanjay Hegde, Senior Advocate)

PRELIMINARY

1. Vide order dated 16.02.2026, this Hon'ble Court framed four broad issues for adjudication by the Nine-Judge Bench. Written Submissions on behalf of the State of Karnataka have already been filed. These Further Written Submissions are filed to place before this Hon'ble Court a detailed comparative analysis of the reasoning of the six-Judge Bench in ***Safdarjung Hospital v. Kuldip Singh Sethi, (1970) 1 SCC 735*** **("*hereinafter referred as Safdarjung*")** and the seven-Judge Bench in ***Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213*** **("*hereinafter referred as BWS*")**, and to supplement the submissions already made on each of the four framed issues.

2. The four issues framed by this Hon'ble Court are:

> *(i) Whether the test laid down in paragraphs 140 to 144 in the opinion rendered by Hon'ble Mr. Justice V.R. Krishna Iyer in Bangalore Water Supply and Sewerage Board's case (supra) to determine if an undertaking or enterprise falls within the definition of "industry" lays down correct law? And whether the Industrial Disputes (Amendment) Act, 1982 (which seemingly did not come into force) and the Industrial Relations Code, 2020 (with effect from 21.11.2025) have any legal impact on the interpretation of the expression "industry" as contained in the principal Act?*
>
> *(ii) Whether social welfare activities and schemes or other enterprises undertaken by the Government Departments or their instrumentalities can be construed to be "industrial activities" for the purpose of Section 2(j) of the ID Act?*

(iii) What State activities will be covered by the expression "sovereign function", and whether such activities will fall outside the purview of Section 2(j) of the ID Act?

(iv) Any other issue(s) that may arise during the course of hearing before the Nine-Judge Bench.

I. COMPARATIVE ANALYSIS: SAFDARJUNG HOSPITAL (6-JUDGE BENCH) vs. BANGALORE WATER SUPPLY (7-JUDGE BENCH)

3. The divergence between the six-Judge Bench in *Safdarjung* and the seven-Judge Bench in *BWS* lies at the heart of the present reference. A systematic comparison on each key issue demonstrates that the *Safdarjung* reasoning was more faithful to the statutory text, and that the *BWS* majority erred in overruling it.

(a) On the doctrine of noscitur a sociis and the meaning of 'undertaking'

Safdarjung (Hidayatullah, C.J., for a unanimous six-Judge Bench):

4. The Court held that the word 'industry' must take its colour from the definition and that a workman is to be regarded as one employed in an industry only if he is following one of the vocations mentioned in conjunction with his employer's vocations (Para 14). An industry is to be found when the employers are carrying on any business, trade, undertaking, manufacture or calling; if they are not, there is no industry (Para 15). Applying the principle of *noscitur a sociis*, the Court held that 'undertaking' must be analogous to trade or business and must result in material goods or material services (Paras 15–22). The Court drew a crucial distinction between 'material services'—involving cooperative effort between employers and employees to provide the community with commercially valuable services such as electric power, water, transport, and mail delivery—and the services of professionals such as doctors, teachers, and lawyers, which depend on individual intellectual skill and are not 'material services' in the relevant sense (Para 18). In Para 25, the Court held:

> *"25. The observations in the Australian case only indicate that in those activities in which Government takes to industrial ventures, the notion of profit-making and the absence of capital in the true sense of the word are irrelevant. The passage itself shows that industrial disputes occur in operation in which employers and employees associate to provide what people want and desire in other words where there is production of material goods or material services. In our judgment the Hospital Mazdoor Sabha case took an extreme view of the matter which was not justified."*

BWS (Krishna Iyer, J., for the majority of five out of seven):

5. Krishna Iyer, J rejected the application of *noscitur a sociis* to the definition, holding that the wider words had been "deliberately used" and could not be cut down by the narrower words. 'Undertaking' was interpreted to cover any organised activity, regardless of whether it bore commercial character. The concurring opinions (Beg, C.J. and Chandrachud, J.) took a narrower view, noting that bearing in mind the collocation of terms and the doctrine of *noscitur a sociis or ejusdem generis* as pointed out in the *State of Bombay v. Hospital Mazdoor Sabha 1960 2 SCR 366* case, coupled words must be understood in their cognate sense. (Para 158)

Submission: The *Safdarjung* approach is textually and logically sound. The word 'undertaking' does not appear in a vacuum; it sits between 'trade' and 'manufacture.' To read it as encompassing every human activity is to render the other four words in the first part of the definition redundant. The *BWS* majority's assertion that wider words were "deliberately used" begs the very question it sought to answer.

(b) On the relationship between the two parts of the definition

Safdarjung:

6. Hidayatullah, C.J. examined the *Secretary, Madras Gymkhana Club Employees Union v Management of the Gymkhana Club, 1968 1 SCR 742* approach (which had attempted to keep the two parts separate) and disagreed. He held that there was no need to view the definition in two separate parts. The definition, read as a whole, denotes a collective enterprise in which employers and employees are associated (Para 12). An industry exists only when there is a relationship of employers and employees, with the former engaged in business, trade, undertaking, manufacture or calling, and the latter following any calling, service, employment, handicraft, or industrial occupation or avocation (Para 12). The two parts are "*two counterparts in one industry*"—not independent definitions. The second part does not, standing alone, define 'industry.' It describes the activities of workmen *within* an industry established by the first part.

BWS:

7. The majority accepted that the definition is in two parts but then departed from *Safdarjung* in application. While *Safdarjung* held that both parts must coexist—the employer must be carrying on a business, trade, undertaking, manufacture or calling, and the workman must be employed therein—the *BWS* majority held that the inclusive second limb independently expanded the definition to cover "any calling, service, employment" of workmen. The effect was to render the first part (the employer's occupational requirement) practically otiose.

Submission: The *Safdarjung* construction respects the statutory architecture. A definition clause that "means" certain things and "includes" others is to be read so that the inclusive part enlarges but does not override the primary meaning. If the inclusive part were to stand independently, the "means" part would serve no purpose. *Safdarjung*'s reading—that the two parts are counterparts, not independent legs—is correct.

(c) On whether profit motive and commercial character are relevant

Safdarjung:

8. While accepting that profit motive is not an essential ingredient, the Court held that the enterprise must nonetheless be analogous to business in a commercial sense. The elimination of profit motive did not mean that every non-commercial, non-productive activity became an industry. The Court held that Safdarjung Hospital was not embarked on an economic activity analogous to trade or business; it was a government department providing medical facilities, and hence not an industry (Para 34). Similarly, the Tuberculosis Hospital, being a research and charitable institution, could not be described as an industry (Para 37). The Kurji Holy Family Hospital, being entirely charitable with income mostly from donations and surplus distribution prohibited, was also held not to be an industry (Para 38).

BWS:

9. The majority went further and held that by eliminating the purpose of earning profits or returns, even activities such as charities, government hospitals providing free medicines, educational institutions, research institutes, cooperatives, and clubs were brought within the sweep of 'industry', provided there was systematic cooperation between employer and employee for the production of goods or services. (Para 142) The test became purely functional: if goods or services are produced through employer-employee cooperation, it is an industry—regardless of whether the activity has any commercial character.

Submission: The *Safdarjung* position strikes the correct balance. While profit motive need not be the *purpose* of the activity, the activity must still bear an analogy to trade or business in character. The *BWS* test obliterated this requirement, leaving nothing outside the definition except sovereign functions in the narrowest sense. As *Coir Board, Ernakulam v. Indira Devi P.S., (1998) 3 SCC 259* observed, this caused practical havoc—voluntary welfare organisations were forced to abandon their activities because of the compliance burden of the ID Act, depriving the community of valuable services. (Para 21)

(d) On sovereign functions and governmental activities

Safdarjung:

10. The Court held that a hospital run as a department of Government, not embarked on economic activity analogous to trade or business, was not an industry. The test was whether the activity was commercial in character, not merely whether it was a 'sovereign function.' The Court distinguished between hospitals run as a business in a commercial way (which might be industries) and hospitals run by the Government or charitable associations for non-commercial purposes (which were not) (Para 24). This was a functional, substance-based test that did not depend on the artificial distinction between 'sovereign' and 'non-sovereign' functions.

BWS:

11. The majority narrowed the exclusion solely to "sovereign functions, strictly understood"—legislative power, administration of justice, and maintenance of law and order. All other governmental activities, including welfare schemes, education, healthcare, and infrastructure, were potentially 'industry.' Even in departments discharging sovereign functions, severable units could be treated as industries. The interpretation in Para 143 erroneously tethered the exclusion to a colonial-era distinction between "regal" and "non-regal" activities. In the framework of a modern Welfare State, the government's constitutional mandates—including forest conservation, rural infrastructure, and public health—are "inalienable" and primary state functions. By labelling these essential duties as "non-sovereign," Para 143 reduced the State to the status of a commercial enterprise while it was discharging obligations vital to the survival and welfare of the citizenry.

Submission: The *BWS* majority's extremely narrow conception of sovereign functions is unsuitable for the Indian constitutional framework. The Constitution establishes a welfare State with pervasive positive obligations under the Directive Principles (Articles 39, 41, 42, 43, 47, 48A). To hold that all welfare activities of the State are 'industry' simply because they involve employer-employee cooperation distorts both the concept of 'industry' and the nature of governance. The *Safdarjung* approach—asking whether the activity has a commercial character analogous to business—is far more principled and workable.

II. SUPPLEMENTARY SUBMISSIONS ON QUESTION (i): THE BWS TEST AND THE LEGISLATIVE LANDSCAPE

The Fallacy of the "Triple Test" (Para 140)

12. The "Triple Test" formulated in Para 140—predicated solely on systematic activity, cooperation, and production of services—is far-fetched and overbroad. By explicitly declaring that the absence of a profit motive is irrelevant, the Court effectively removed the commercial essence intended by the legislature. This has led to the erroneous inclusion of non-commercial, welfare-oriented government departments, such as Forest Conservation, within the industrial regulatory regime.

13. Para 141 incorrectly treats "undertaking" as an exhaustive, standalone category. Under the canon of *noscitur a sociis*, "undertaking" must derive its meaning from its associates: "trade, business, manufacture, or calling." It should only encompass activities analogous to a commercial or productive enterprise.

14. The "Dominant Nature" test established in Paras 142 and 143 lacks a discernible legal standard and effects an expansion that contradicts the restrictive textual limits of Section 2(j). By prioritising the complex of activities over institutional character, Para 142 forcibly subsumes charitable, research, and educational institutions into the industrial regulatory regime—a result never contemplated by the legislature.

15. The Court erred in Para 144 by overruling *Safdarjung Hospital v. Kuldip Singh Sethi, (1970) 1 SCC 735*. The *Safdarjung* judgment correctly held that an industry must involve an economic activity for the production of "material goods or material services." This was a principled test grounded in the statutory language and should be restored.

The Legislative Landscape: 1982 Amendment and IR Code, 2020

16. The legislature has, on two occasions, sought to correct the overexpansion effected by *BWS*. The Industrial Disputes (Amendment) Act 46 of 1982 substituted a new definition that expressly excluded hospitals, dispensaries, educational institutions, charitable organisations, khadi and village industries, professional services with fewer than ten employees, cooperatives with fewer than ten employees, domestic services, and sovereign governmental functions. Although enacted, it was never notified.

17. The Industrial Relations Code, 2020 (Act No. 35 of 2020), enforced with effect from 21.11.2025 (Notification No. S.O. 5320(E)), has now repealed the ID Act and redefined 'industry' under Section 2(p). The legislature has restored the purposive element by requiring the activity to be "systematic" and directed towards the "production, supply or distribution of goods or services." It expressly excludes: (i) charitable, social, or philanthropic institutions; (ii) sovereign governmental functions (including defence research, atomic energy, and space); (iii) domestic services; and (iv) any other activity notified by the Central Government.

18. This legislative restoration renders the "Triple Test" and the inclusion of welfare schemes as seen in *BWS* obsolete and legally incorrect in the present constitutional and statutory landscape. The Code confirms that the legislature never intended the expansive interpretation that *BWS* imposed upon Section 2(j).

III. SUPPLEMENTARY SUBMISSIONS ON QUESTION (ii): SOCIAL WELFARE ACTIVITIES

19. The hallmark of an 'industry' is its participation in an economic activity analogous to trade or business. Social welfare schemes such as rural employment guarantees (MGNREGA), public health initiatives, Integrated Child Development Services, and forest conservation projects are not conducted with a view to generate profit or compete in a market.

20. Relying on *Safdarjung Hospital*, which correctly held that an industry must involve the production of "material goods or material services," welfare activities focused on social justice and human development do not result in "material services" that can be equated with the output of a factory or a trade house. (Para 25)

21. The ID Act's machinery—conciliation, adjudication, prohibition of strikes and lockouts, standing orders, retrenchment compensation—was designed for the resolution of disputes in organised commercial or productive enterprises. It is ill-suited to government departments

discharging welfare functions. Imposing this regime on welfare activities has, as observed in *Coir Board*, led to the cessation of many welfare activities and the loss of employment opportunities—the very opposite of the Act's object. (Para 21)

22. The IR Code, 2020 has now confirmed this by expressly excluding charitable, social, and philanthropic institutions. This exclusion would be unnecessary if such activities were never intended to be 'industry' in the first place—its inclusion represents the legislature's acknowledgment that *BWS* had erroneously brought them within the fold.

IV. SUPPLEMENTARY SUBMISSIONS ON QUESTION (iii): SCOPE OF 'SOVEREIGN FUNCTION'

23. The definition of sovereign functions must evolve beyond the archaic "regal" functions (administration of justice, legislation, and defence) identified in early precedents. In the context of the Indian Constitution, sovereign functions include all activities that the State is constitutionally mandated to perform under the Directive Principles of State Policy.

24. It is submitted that 'sovereign function' in the Indian context must encompass:

(a) The inalienable regal functions: legislation, administration of justice, defence, and maintenance of law and order;

(b) Functions mandated by the Constitution to be discharged by the State, including those under the Directive Principles: protection of environment and forests (Article 48A), public health (Article 47), education (Article 41), and rural development;

(c) Regulatory and supervisory functions discharged by statutory bodies established by the Government for the promotion and development of particular sectors;

(d) Functions discharged by Panchayati Raj institutions under Part IX of the Constitution.

25. The primary test must be the source of the power and the nature of the obligation. If an activity is performed by the State in discharge of a statutory or constitutional duty, and is not an "economic adventure" in competition with private entities, it is a sovereign function and not an 'industry.' Mere presence of "systematic activity" or "cooperation" cannot be the sole determinant.

26. In the present case, the Forest Department discharges obligations under Article 48A, the Indian Forest Act, 1927 and the Forest (Conservation) Act, 1980. The Engineering Department of the Zilla Panchayat discharges constitutionally entrusted functions under Part IX. Neither department produces, supplies, or distributes goods or services in any commercial sense.

V. SUPPLEMENTARY SUBMISSIONS ON QUESTION (iv): OTHER ISSUES

27. **Transitional concerns:** Since the IR Code, 2020 has repealed the ID Act with effect from 21.11.2025, the practical utility of any pronouncement on Section 2(j) is limited to: (a) pending disputes that arose under the old Act; and (b) providing interpretive guidance for Section 2(p) of the new Code. This Hon'ble Court may fashion its answer to ensure a smooth transition.

28. **Worker welfare in non-industrial organisations:** As observed in *Coir Board*, it is of paramount importance that a proper law be framed to promote the welfare of labour employed in industries. It is equally important that the welfare of labour employed in other kinds of organisations is also promoted and protected. But the measures required for the latter may be different, and may have to be tailored to the nature of such organisations, their infrastructure, and their financial capacity. The blanket application of the ID Act's machinery to all organisations was the very mischief that led to the abandonment of welfare activities and the curtailment of employment.

29. With regard to any other issues that may arise, the same will be addressed during the course of hearing.

PRAYER

30. In view of the foregoing Further Written Submissions, read with the Written Submissions already filed, it is respectfully prayed that this Hon'ble Court may be pleased to:

(a) Hold that the test laid down in paragraphs 140–144 of *Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213* does not lay down correct law, and restore the principled interpretation of 'industry' as laid down by the six-Judge Bench in *Safdarjung Hospital v. Kuldip Singh Sethi, (1970) 1 SCC 735*;

(b) Hold that the doctrine of *noscitur a sociis* must be applied to interpret 'undertaking' in Section 2(j) as covering only activities analogous to trade or business, and that not every organised activity involving employer-employee cooperation constitutes an 'industry';

(c) Hold that social welfare activities and schemes of Government departments and their instrumentalities do not constitute 'industrial activities' within the meaning of Section 2(j), unless they are analogous to trade or business in a commercial sense;

(d) Hold that 'sovereign function' in the Indian constitutional framework encompasses not merely the inalienable regal functions but also constitutionally mandated governmental functions, including those under the Directive Principles of State Policy;

(e) Take note of the Industrial Relations Code, 2020 (enforced 21.11.2025), whose Section 2(p) expressly excludes sovereign governmental functions, charitable institutions, and domestic services, as confirming the legislative intent to correct the overexpansion effected by the *BWS* decision.

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