SECTION –III-A

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A.NO. 65699 OF 2026

IN

CIVIL APPEAL NO. 897 OF 2002

IN THE MATTER OF: -

State of U.P. **….Appellant**

VERSUS

Jai Bir Singh **……Respondent(s)**

AND IN THE MATTER OF:

Centre of Indian Trade Unions (CITU) **…….. Intervenor**

I N D E X

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1.	Modified Written Submissions By P V Surendranath, Senior Advocate On Behalf Of Centre Of Indian Trade Unions (Citu).	1+3	NIL

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CODE – 3005

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MODIFIED WRITTEN SUBMISSIONS BY P V SURENDRANATH, SENIOR ADVOCATE ON BEHALF OF CENTRE OF INDIAN TRADE UNIONS (CITU).

I. Preliminary introductory submissions without specifics:

1. The Industrial Disputes Act, 1947 is one of the statutes of welfare state vintage in adoption of Keynesian Welfare State economics, for whatever political reasons, for minimum contentment of workers and thereby ensure capital and labour cooperation and peace in industry for development and better industrialization in developing countries. In fact, it is by adopting and modified section 3 of Commonwealth Conciliation & Arbitration Act, 1911 of Australia.

2. The definition of industry in Section 2 (j) of Industrial Disputes act, 1947 reads as follows;

> **2(j) "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;

3. It is pertinent to note that though this definition is adopted from section 3 of Common Wealth Conciliation & Arbitration Act, 1911 of Australia and modified unfortunately by mistake it was stated as adopted from Section 4 of Common Wealth Conciliation & Arbitration Act, 1904 in ***Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi (Safdarjung Hospital Case) 1970 (1) SCC 735***.

4. This definition led to hotly contested disputes and various decisions of various High Courts and this Hon'ble Court from *D N Banerji Vs. PR Mukherjee (Banerji's case)* ***1952 SCC online SC 136*** to the *Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi (Safdarjung Hospital Case)* ***1970 (1) SCC 735***. Some of the precedents are mutually contradictory, confusing and vague. At times the reasonings in the given precedents are also mutually contradictory and conflicting.

5. Despite confusing and conflicting precedents and series of amendments made by the Union Parliament by way of amendment acts 41 of 56, 35 of 65, 45 of 71, 32 of 72 , 32 of 76 the competent parliament did not step into for a clear legislation amending Section 2 (j) for clearing ambiguities and vagueness.

6. It is in the above context the maze of zigzag and conflicting precedents led to seven Bench judgment in ***Bangalore Water Supply and Sewerage Board Vs. Rajappa [1978 (2) SCC 213 Bangalore Water Supply case]***. The judgment of Krishna Iyer J (on behalf of himself, Bhagawati and Desai JJ), concurrent judgment of Chief Justice Beg- and supporting judgment of justice Chandrachud - majority opinion at Para 140 interpreted 'industry' in 2 (j) of the Industrial Disputes Act and stated the enunciated principles at Para 141 to 143 . At Para 144 it is specifically and clearly held;

> "144. **We over-rule Safdarjung, Solicitors' case, Gymkhana, Delhi University, Dhanrajgirji Hospital and other rulings whose ratio runs counter to the principles enunciated above, and**

Hospital Mazdoor Sabha is hereby rehabilitated. "

7. Even after Bangalore Water Supply case Parliament has got complete power and competence to make legislation restricting, expanding or amplifying the scope of definition of 'industry' at section 2 (j). Legislation is fully aware of the precedents, development of law and the authoritative pronouncement on interpretation of definition *'industry'* at 2 (j) by seven Bench of this Hon'ble Court- Bangalore Water supply Sewerage Board case. Parliament was and is not inhibited from bringing any such definition for 'Industry'. In fact the Parliament by way of Industrial Disputes (Amendment) Bill 1982 amended the term 'Industry' adopting para 140 of the Krishna Iyer judgment defining – interpreting '*Industry*' under 2 (j), though by incorporating exemption clauses from 1 to 9 restricted the scope and width of industry. It is pertinent to note that the amended definition had not been brought into force by notification by the Government. This shows the Government refused to notify the amended definition '*industry*' with highly restrictive clauses as they realized that it was not in the interest of development and industrialization in India and it would cause unwarranted confusion and breach of peace in the industrial sector. The Bangalore Water Supply case cannot be an inhibition or restriction on the Parliament or the Government in bringing amendment.

8. Now the Union Parliament has passed the New Industrial Relations Code 2020 and repealed Industrial Disputes Act, 1947. It is now brought into force as well by the Union Government.

9. It is respectfully submitted that the definition of '*Industry*' as interpreted and stated in Para 140 is now incorporated in the definition of **S.2(p) of the Industrial Relations Code, 2020** which came into force on 21st November, 2025, *vide* S.O. 5320(E), dated 21-11-2025, the same is extracted as follows:

> "***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 charitable, social or philanthropic service; or

(ii) any activity of the appropriate Government relatable to the sovereign functions of the appropriate Government including all the activities carried on by the departments of the Central 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;

10. The Industrial Disputes Act, 1947 is no more in the statute book. It is repealed with effect from 21.11.2025 as per Industrial Relations Code (Amendment) Act, 2026.

11. Though the New Industrial relations Code ,2020 contains various provisions against interest of working class and industrial peace the basic concept of Bangalore water Supply Case is accepted in the new definition of 'Industry', the

provision 2 (p) (iv) permitting the Central Government to notify any other activity exempting from '*Industry"* , notwithstanding.

12. The Parliament have taken away the requirement of "capital", " gain or profit" from the definition of the industry. The requirement is " systematic activity", "co-operation between employer and worker" for the production, supply or distribution of goods or services to satisfy "human wants or wishes" .

13. In light of section 2 (p) of Industrial Relations Code 2020 which is notified and come into force, the 1982 amendment amending Section 2 (j) with restricting clauses cannot have any bearing or legal impact on the interpretation of the expression "industry' as contained in the Industrial Disputes Act, 1947. It cannot be an aid to expose the intention of the legislation.

14. What is the scope of exemption clauses under "2 (p) (ii)" is a matter of interpretation on given facts and context. What are the activities relatable to "sovereign" functions of the government is an issue to be decided on case to case basis depending upon the nature of activity, facts of the case and the contexts, and of course subject to challenge under article 14 of the constitution if any. It cannot be by way of reconsideration of Bangalore Water Supply Judgment (supra) especially in light of the fact that even now the Parliament has not delineated sovereign functions and never extended to Governmental functions or welfare activities. What functions/activities amount to sovereign functions is also a matter to be decided on given facts and context. This is the case with charitable or Philanthropic service. These issues are to be decided on case to case basis only as stated and held by Bangalore Water Supply judgment (supra).

15. Hence no reconsideration of the judgment is necessitated at this juncture.

II. Bangalore Water Supply Judgment never prevented Parliament or the executive Government from making legislation and notifying the same amending (industry) with restrictive or expanding clauses.

1. The Parliament accepted Bangalore Water Supply Case's interpretation of Section 2 (j). It is a conscious decision fully aware of the requirement of

employer/workers- capital and labour cooperation and peace in industry.

2. The Bangalore Water Supply Case has not declared the "sovereign function" would also cover industry. What amounts to "sovereign function" is a matter of fact to be decided on case to case basis considering the nature of activity. As a matter of fact an earlier Nine Bench decision of this Hon'ble Court In **Superintendent and Legal Remembrancer State of West Bengal Vs. Corporation of Calcutta [1966 SCC Online SC 42 at para 23 – Vol 5A @ pg 1438]** had held that "Sovereign function" cannot be equated with Governmental function or governmental activities. This decision was followed by this Hon'ble Court in **B K Ravichandra & others Vs. Union of India & others [2021 (14) SCC 703 para 34 – Vol 5A @ pg 1499**].

3. Wherever the Government undertakes public welfare activities in discharge of its constitutional obligations such activities cannot be treated as activities in discharge of "sovereign function" outside the purview of industry. The present section 2 (p) 'I*ndustry*' in Industrial Relations Code 2020 does not give any such exemption for governmental activities either under Part IV or otherwise. This Hon'ble Court has time and again declared and restated that provisions under Part IV are not actionable. As far as the workers are concerned, they are selling their labour for wages and it is for production, supply or distribution of goods or services. The Government hire the workers for the same purpose. They are not discharging the duties not as any voluntary constitutional obligation.

4. **<u>Government estopped from seeking reconsideration</u>** - The Union Government having accepted the definition of 'industry' as interpreted and stated in Bangalore Water Supply Case which has been holding the field for the last almost 50 years (48 years), the Government cannot seek reconsideration of the judgment at this point of time. In light of new Industrial Relations Code,2020 and especially 2 (p) – definition of industry, any such reconsideration cannot affect section 2 (p) and hence the

impact of reconsideration will only be for interregnum period. In this context, such a reconsideration will only cause severe miscarriage of justice with respect to workers involved.

5. In **Superintendent and Legal Remembrancer State of West Bengal Vs. Corporation of Calcutta** ***(vol 5A @ 1458)*** this Hon'ble Court stated that

> ***"****Even in England this rule of interpretation has not been treated as inflexible. It is gradually losing ground in many branches of law. The incongruity of the rule of discrimination in favour of the Crown was pointed out by Glanville L. Williams in his treatise on 'Crown Proceedings, at P. 53*
>
> *The rule originated in the Middle Ages, when it perhaps has some justification. Its survival however, is due to little but the vis inertia****e.'"***

6. In **Chief Conservator of Forest Vs. Jaganatha Maruti Kondhare [1996 (2) SCC 293 para 11 – Vol5 @ pg 3635]** this Hon'ble court expressed the fallacy of the archaic of sovereign immunity and sovereign function. In para 11 of the judgment it says;

> **"***As to which function could be, and should be, taken as regal or sovereign function has been recently examined by a Bench of this Court, to which one of us (Hansaria, J.) was a party. This was in Nagendera Rao and Co. v. The State of Andhra Pradesh , in which case Sahai, J. Speaking for the Bench examined this question in detail in the background of the stand of the respondent-State pleading absence of vicarious liability because of the doctrine of sovereign immunity. This aspect has been dealt in paras 21 to 24, Para 21 opens by saying that the old and archaic concept of a sovereignty does not survive as sovereignty now vests in the people. It is because of this that in the aforesaid Australian case the distinction between sovereign and non-sovereign functions was categorised as regal and non-regal. In some cases the expression used is State function,*

whereas in some Governmental function.". This judgment was following **N Nagendra Rao & Co. Vs. State of A.P [1994 (6) SCC 205 Para 21 to 24 – vol5 @ pg 3216]**

7. **Employees outside Article 311** - In India there are more than 10 million poor workers working as Anganwadi workers, Anganwadi helpers, Asha workers, noon meal workers and various other " scheme workers" without any statutory rules under Article 311 of Constitution of India for protection of rights and service conditions and hence no forum or remedies for the grievances. They come under the definition of industry as stated in Bangalore Water Supply judgment and S.2(p) of the Industrial relations Code,2020. If welfare activities of the State are treated as sovereign functions, all these workers -employees will be outside the purview of 'industry' without any quick and cheap legal remedies. It would only affect such activities prejudicially

8. Many of the Educational Institutions such as Universities, Colleges and Research Institutes has got their own field and for field operations, they are hiring large number of labourers not covered by Service Rules. These operations are part of industry. Same is the situation with respect to various departments such as forest, fisheries etc. If these activities are put beyond the scope of industry, they will be without remedy.

III. Safdarjung Hospital Case:- Wrongly decided discarding 'means and includes' test- Reasonings are mutually contradictory-

1. The Safdarjung Hospital Case is wrongly decided rejecting the time tested interpretation of 'means and includes' Its refusal to read the second clause of section 2 (j) as extending the meaning beyond the terms of the first clause was because it found that section 2 (j) only "**modifies somewhat the definition of industry in section 4 of the Common Wealth Conciliation & Arbitration Act ."** In Safdharjung case it is found "***Although the two definitions are worded differently the purport of both is the same. It is not necessary to view our definition in two parts. The***

definition read as a whole denotes a collective enterprise in which employers and employees are associated." As a matter of fact section 4 **of the Common Wealth Conciliation & Arbitration Act was** not a two part definition but one composite part listing 7 categories of enterprises and requiring that the employer hire workmen to qualify as industry. It is pertinent to note that as referred to in the introductory paragraph, above section 2 (j) was not a modification of section 4 **of the Common Wealth Conciliation & Arbitration Act** but a modification of totally different 1911 amendment of 1904 Australian Act section 3.

2. Had Safdarjung Case correctly noticed the 1911 Act as the origin of section 2 (j) it would not have discarded the 'means and includes' principle of interpretation consistently accepted and applied by this Hon'ble Court as done in the matter of Hospital Masdoor Sabha Case. Anyhow now the words – concept of "**business manufacture, trade , profit motive, capital investment Commercial sense , analogous to trade or business in a 'Commercial sense'** etc. are done away with in present section 2 (p) of the Industrial Relations Code 2020 accepting Bangalore water Supply Case. As a matter of fact when the profit motive is not a relevant consideration as per Sufdarjung case the principles formulated economic activity analogous to 'trade or business' makes no sense.

3. As per the present section 2 (p) it covers all sorts of undertaking, calling of employers, calling , service and employment if systematic activity is carried on by cooperation between an employer and the worker it covers 'industry'. It is immaterial that whether capital has been invested or activities carried on with a motive to make any gain or profit. Hence judgment in Hospital Masdhoor Sabha is correct and Safdarjung Hospital case wrongly decided.

IV. Reconsideration is not justified:

1. Reconsideration cannot be done lightly as declared by this Hon'ble court from time and again. The power is not unrestricted or unlimited. [Para 673

of **Supreme Court Advocates On Record Association & anr. Vs. Union of India [2016 (5) SCC 1 @ vol 5 @ pg 5572**]. Merely because a view different from or contrary to what has been expressed earlier is preferable is no reason to consider a Larger Bench Constitution Bench Decision, unless and until it is convinced that earlier decision is plainly erroneous and has a baneful effect on the public or that it is inconsistent and manifestly wrong.

2. The judgment and findings – decisions in Bangalore Water Supply case is binding authoritative pronouncement. Chief Justice Beg did not dissent. He concurred with the findings and conclusions of the judgment of Justice Krishna Iyer, accepting the reasoning as well. The fact that he gave separate opinion adding his reasons for the agreement will not render it a dissenting judgment. He has found that the judgment in ***Banerji's case, Corporation of City of Nagpur case and Hospital Masdhoor Sabha & others*** case are all correctly decided. He has also rejected the reasonings in Safdarjung Hospital Case expressing complete agreement with Krishna Iyer J. The conclusions of para 140 to 144 are the authority pronouncement of the majority.

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