

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (CIVIL) NO. 12679-12682 OF 2014

IN THE MATTER OF  
THE COMMISSIONER, H.R. & C.E. ADMINISTRATION,  
NUNGAMBAKKAM, CHENNAI & ANR. ...PETITIONER

VERSUS

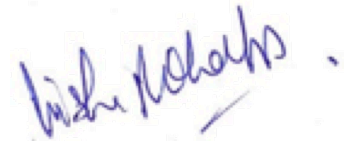
D. RANGANATHAN & OTHERS ...RESPONDENTS

WRITTEN SUBMISSIONS ON BEHALF OF PETITIONERS

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Date: 17.03.2026

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A. FACTUAL BACKGROUND

1. The Petitioner No. 2, Arulmigu Subramaniaswamy Thirukoil, Tirutani (the 'Temple'), is a Hindu religious institution of great antiquity and significance, governed under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (the 'HR&CE Act'). The Temple is administered by the Commissioner, H.R. & C.E. Administration (Petitioner No. 1) in exercise of the powers conferred under the HR&CE Act. The Temple is a place of public religious worship, dedicated to and used as a right by the Hindu community. The deity enshrined at the Temple is Arulmigu Subramaniaswamy. The Temple receives no income from trade, business or commerce. Its income consists entirely of offerings made by devotees and donations. All such income is

- impressed with a religious purpose and governed by the provisions of the HR&CE Act.
2. The Respondents are retired employees of the Temple who served in various categories as last-grade servants, attenders and 'ulthurai servants'. The duties of ulthurai servants consist primarily of rendering assistance in the performance of pooja and other services to the deity, the recitation of Mantras and Vedas, the maintenance of the sanctum, and the carrying out of rituals as directed by the archakas. Last-grade servants and attenders perform housekeeping and support functions incidental to the conduct of religious worship. None of these employees produce any material goods or render any commercial service. Their entire function is in furtherance of the religious purpose of the Temple.
  3. The employment of temple servants is governed by a comprehensive and self-contained statutory scheme under the HR&CE Act. Section 116 of the HR&CE Act empowers the Government to frame rules regulating the service conditions of officers and servants of religious institutions. In exercise of this power, the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 (the '1964 Rules') were framed. Rule 26 of the 1964 Rules specifically deals with the payment of gratuity to non-hereditary officers and servants of religious institutions included in the list published under Section 46 of the HR&CE Act. Under Rule 26, every non-hereditary officer or servant who retires after completing ten years of service in such a religious institution is entitled to gratuity at the rate of half a month's salary for every completed year of service, subject to a maximum of fifteen months' salary. The proviso to Rule 26 provides

- that this rule shall not apply to any institution where the Contributory Provident Fund Scheme is in force.
4. In or about the year 1996, the Respondents, upon their retirement, claimed gratuity under the Payment of Gratuity Act, 1972 (the 'Gratuity Act'), contending that the Gratuity Act was applicable to the Temple and that they were entitled to gratuity under the provisions thereof, as being more beneficial than Rule 26 of the 1964 Rules. The Petitioner resisted the claim on the ground that the Gratuity Act is not applicable to the Temple and that the 1964 Rules constitute the applicable law governing the payment of gratuity to temple servants. It was also contended that the Temple, being a religious institution engaged exclusively in religious and charitable activities, does not fall within the definition of an 'establishment' under Section 1(3)(b) of the Gratuity Act.
  5. The Controlling Authority under the Gratuity Act, by an order dated 16.07.1999, held that the Temple was covered by the Gratuity Act and directed payment of gratuity. The Appellate Authority, by order dated 02.08.2000, confirmed the order of the Controlling Authority. The Commissioner, H.R. & C.E. Administration, thereafter rejected the claims by order in Proc. No. 1286/2000 A.1 dated 19.09.2000.
  6. The Temple and the Controlling Authority filed separate writ petitions before the Madras High Court. The Temple sought quashing of the proceedings of the Controlling Authority and Appellate Authority and a declaration that the Gratuity Act had no application to the Temple. The

- Respondents sought a declaration that Rule 26 of the 1964 Rules was ultra vires the Gratuity Act.
7. The learned Single Judge, by a common order dated 13.03.2003 in W.P. Nos. 17569 to 17598 and 19559 of 2000, W.P. No. 20201 of 2000 and W.P. No. 6707 of 2001 (Ann. P-3 @pg 8340 of Vol. 3), held that the provisions of The Payment of Gratuity Act will have no application to the employees employed in the temples governed by the provisions of the Hindu Religious and Charitable Endowments Act and Rules 26 to 29 alone will govern. The Temple's writ petitions were allowed and the proceedings of the Controlling Authority and Appellate Authority were quashed. The Respondents' writ petitions were dismissed.
  8. The Respondents preferred Writ Appeals before the Madras High Court. When the Writ Appeals came before a Division Bench, it noticed a conflict with an earlier Division Bench decision in W.A. No. 2626/2002 (Tiruchendur Arulmigu Subramaniaswamy Kovil Oivupetra Paniyalargal Sangam v. Executive Officer, Arulmigu Subramaniaswamy Devasthanam, Tiruchendur, decided on 02.09.2008), which had also held that the Gratuity Act was inapplicable to a Devasthanam. The Division Bench accordingly referred the matter to a Full Bench of the High Court.
  9. The Full Bench of the Madras High Court decided the matter on 17.09.2012 (Impugned Order-I @pg 8252 of Vol. 3). The Full Bench held that religious institutions fall within the meaning of 'establishment' under Section 1(3)(b) of the Gratuity Act. The Full Bench also held that Rule 26 of the 1964 Rules, to the extent its proviso restricts the more beneficial Central Act, is repugnant to Section 4(5) of the Gratuity Act. The Full

Bench overruled the earlier Division Bench decision in W.A. No. 2626/2002. By the consequential order dated 12.12.2012 (Impugned Order-II @pg 8290 of Vol. 3), the Division Bench directed the Controlling Authority to adjudicate all pending gratuity claims within six months.

10. The Full Bench, in arriving at its conclusion, applied Category II of the charitable institution analysis in Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 to the Temple and held that there is employer-employee relationship and since the Temple paid wages to its employees and granted leave, it fell within Category II and was therefore an industry, and hence an establishment under the Gratuity Act. (see para 21 @pg 8278-8279 of Vol. 3)

## B. SUBMISSIONS

11. It is submitted that the definition of 'industry' under Section 2(j) of the IDA is confined to activities of a commercial character. An institution whose entire function is charitable, spiritual or religious is outside this definition because charity, by its nature, destroys the commercial character that is the predicate of the definition.
12. At paragraph 105 of BWS, Justice Krishna Iyer recorded the argument of Justice Tarkunde in the following terms:  
*'Sri Tarkunde, based on Safdarjung, submits that, ex hypothesi, charity frustrates commerciality and thereby deprives it of the character of industry.'*

13. Justices Jaswant Singh and Tulzapurkar in BWS, para 185, in their dissenting opinion held as follows:

*'..... We are inclined to think that the definition is limited to those activities systematically or habitually undertaken on commercial lines by private entrepreneurs with the cooperation of employees for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community.'*

14. It is submitted that the correct approach to the construction of Section 2(j) of the IDA is through the doctrine of noscitur a sociis, which has also been recognized in the decision of BWS - Para 13, 37, 47, 173, 177, 185 and para 16 and 41 in the decision of Jai Bir Singh.

15. At BWS para 37, Justice Krishna Iyer himself applied this principle to 'undertaking', expressly invoking noscitur a sociis:

*'The expression undertaking cannot be torn off the words whose company it keeps. If birds of a feather flock together and noscitur a sociis is a commonsense guide to construction, undertaking must be read down to conform to the restrictive characteristic shared by the society of words before and after. Nobody will torture undertaking in Section 2(j) to mean meditation or musheira which are spiritual and aesthetic undertakings. Wide meanings must fall in line and discordance must be excluded from a sound system.'*

16. The dissent of Justices Jaswant Singh and Tulzapurkar in BWS at paragraph 185 independently applied noscitur a sociis with full rigour. Applying this doctrine, 'business', 'trade', 'manufacture', 'calling',

'undertaking' are all commercial; the class they define is commercial activity; the definition of industry is confined to that class. A temple is not a member of that class. Its entire function, from the performance of daily pooja to the recitation of Vedas, is spiritual and religious and not commercial.

17. It is submitted that the three categories of charitable enterprises described at paragraphs 103 to 106 of BWS are not exhaustive. Justice Krishna Iyer himself expressly acknowledged this at paragraph 103 @pg 2128 of Vol. 5 of BWS @pg 2128 of Vol. 5 '*...Easily, three broad categories emerge; more may exist.*'
18. The categories were formulated as illustrative examples. They were not intended to be an exhaustive classification. The words 'more may exist' are a clear acknowledgment that the categorisation is open-ended. The Full Bench in Impugned Judgment-I proceeded on the wrong assumption that the Temple must fall in one of the three categories and, not finding it in Category I or Category III, placed it in Category II. This reasoning is flawed at its foundation because the Temple is not required to fit in any of the three categories.
19. The Safdarjung bench further affirmed the test laid down in the Gymkhana Club case (Secy., Madras Gymkhana Club Employees' Union v. Gymkhana Club, (1968) 1 SCR 742) in para 22 @pg 458 of Vol. 5 that:  
  
*'...before the work engaged in can be described as an industry, it must bear the definite character of 'trade' or 'business' or 'manufacture' or 'calling' or must*

*be capable of being described as an undertaking resulting in material goods or material services.'*

20. It is submitted that the Safdarjung principle should be upheld, as has been suggested in para 41 and 42 in *State of U.P. v. Jai Bir Singh*, (2005) 5 SCC 1 @pg 4353 of Vol. 5.
21. In view of the above, services rendered purely for the satisfaction of spiritual urges are excluded from 'industry'. The services of temple employees are rendered in furtherance of religious worship and the propitiation of the deity. The pooja performed by the archaka, the recitation of Vedas by the ulthurai servant, the daily rituals of the Temple, are all rendered for the satisfaction of the spiritual needs of the devotees. These services are not capable of entering the world of *res commercium*. They cannot be bought and sold in a commercial market.
22. It is most humbly submitted that as has been held in para 42 in *State of U.P. v. Jai Bir Singh*, (2005) 5 SCC 1 @pg 4354 of Vol. 5, in hospitals and educational institutions, concepts like the right of workers to go on 'strike' or the employer's right to 'close down' and 'lay off' are not contemplated, because these are services, which always require manning. If patients and students are to be left to the mercy of employer-employee disputes, the very purpose of the service activity would be frustrated. This reasoning applies with even greater force to a temple, where industrial action of any kind would interrupt the daily performance of pooja and the conduct of religious worship for thousands of devotees. The right to 'close down' a temple is not contemplated by any law. The right of temple servants to go

on 'strike' and thereby suspend daily worship is antithetical to the nature of a religious institution.

23. The most recent pronouncement of this Hon'ble Court dated 29.01.2026 in Civil Appeal No. 7549 of 2011, *Indravadan N. Adhvaryu Pipala Fali Modhvada v. Laxminarayan Dev Trust*, holds that a temple trust does not fall within the 'four corners' of the definition of industry under Section 2(j) of the IDA. Three concurrent findings to this effect were affirmed without interference by noting in para 4 that, *"4. Though the argument of the learned senior counsel for the appellant at the first blush looks attractive, we are not inclined to entertain the same as the reasons assigned by the Labour Court is to the effect that the respondent-Trust is a temple and as such, it would not fall within the four corners of the expression "industry"....."*

24. It is submitted that a two-judge bench of this Hon'ble Court in *Coir Board v. Indira Devi*, (1998) 3 SCC 259 conducted a comprehensive survey of all decisions of this Court on the definition of 'industry' in para 24, including the BWS judgment, and passed an order of reference in the following terms:

*'Since the difficulty has arisen because of the judicial interpretation given to the definition of industry in the Industrial Disputes Act, there is no reason why the matter should not be judicially re-examined. In the present case, the function of the Coir Board is to promote coir industry, open markets for it and provide facilities to make the coir industry's products more marketable. It is not set up to run any industry itself. Looking to the predominant purpose for which it is set up we would not call it an industry.....'*

25. The bench then made the following observation, which is directly in support of the Tarkunde proposition and of the reference now before this nine-judge bench in para 25:

*'We do not think that such a sweeping test was contemplated by the Industrial Disputes Act, nor do we think that every organization which does useful service and employs people can be labelled as industry.'*

26. It is submitted that the correct approach to the definition of 'industry' recognises that different sectors of social and economic activity are governed by different legal regimes. The IDA is the law of commercial industrial activity. It is not a universal code for all organised activity involving an employer and employee. Different sectors, commercial, educational, charitable, religious, are governed by their own dedicated laws. When a dedicated legal regime governs the employment relationship in a particular sector, the IDA does not apply to that sector, because the legislative scheme shows that Parliament has addressed that sector separately.

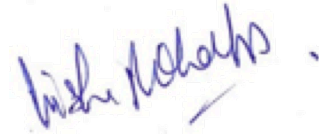
27. The objective of a venture cannot be said to be irrelevant. Each sector should be dealt with by its own laws. The nature of economic activity is important. All aspects of human endeavor can't be treated similarly. Beneficial provision may be made as appropriate.

28. The Temple is the clearest possible example of this principle. Its employment relationships are governed entirely by the HR&CE Act, 1959 and the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 ('the 1964 Rules'). Rules 26 to 29 of the 1964 Rules

provide a complete and self-contained gratuity scheme for temple servants. The HR&CE Act provides comprehensive regulation of the appointment, conditions of service, discipline and termination of temple servants. This dedicated statutory regime confirms that the legislature understood temple employment to stand categorically outside the ordinary commercial employment framework that the IDA governs.

Date: 17.03.2026

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