

**IN THE SUPREME COURT OF INDIA**

Civil Appeal No(s) 897 of 2002

State of Uttar Pradesh vs. Jai Bir Singh

**SUBMISSIONS BY VIJAY HANSARIA, SR ADVOCATE**

1. The conclusions recorded in paragraphs 140 to 143 of the judgement in *Bangalore Water Supply* is the unanimous view of all the seven Learned judges constituting the Bench.
  - *Hon'ble Mr Justice Krishna Iyer* delivered majority on behalf of self, *Justice PN Bhagwati* and *Justice DA Desai* (Para 140-143)
  - *Hon'ble Chief Justice MH Beg* agreed with the opinion of *Justice Krishna Iyer* (Para 146 and 169)
  - *Hon'ble Mr Justice YV Chandrachud* on behalf of self, *Hon'ble Mr Justice Jaswant Singh* and *Hon'ble Mr Justice Tulzapurkar* expressed their broad agreement with the views expressed by *Hon'ble Mr Justice Krishna Iyer* (Para 170)
  - After retirement of *Chief Justice Beg* on 21.02.1978, *Chief Justice YV Chandrachud*; and *Hon'ble Mr Justice Jaswant Singh* on behalf of self and *Hon'ble Mr Justice Tulzapurkar* delivered judgement on 07.04.1978 with certain dissent with *Hon'ble Mr Justice Krishna Iyer* .
2. It is submitted that no judgement can be delivered on behalf of the Court after retirement of any member of the Bench. A judgment delivered can be delivered "on behalf of the Court" only if, on the date of pronouncement, all the judges are lawfully in office and are competent to perform judicial functions. After the retirement of *Hon'ble Chief Justice MH Beg* on 21.02.1978, the seven judge Bench stood dissolved and no judgement or opinion of the Court could have been delivered by any other member of the Bench. Thus, it is submitted that the opinions delivered on 07.04.1978 by *Hon'ble Mr Justice Chandrachud* and *Hon'ble Mr Justice Jaswant Singh* are not judgments of the Supreme Court and cannot be looked into.
3. Merely because the judgement of *Bangalore Water Supply* was given on the date of retirement of *Hon'ble Chief Justice MH Beg*, it does lose the character of a binding precedent by a Bench of seven Hon'ble judges. On this analogy, large

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number of judgements would be liable to be reconsidered by a larger bench including the following:

- a. *Aligarh Muslim University*<sup>1</sup> (7 judges) : please see observation of Hon'ble Mr Justice Dipankar Datta (Pg. 253, Pr. 382)
  - b. *Tulsiram Patel*<sup>2</sup> (5 judges) : please see observation of Hon'ble Mr Justice MP Thakkar (Pg. 525, Pr. 178)
  - c. *Mafatlal Industries Ltd*<sup>3</sup> (9 Judges) : please see observation of Hon'ble Mr Justice B L Hansaria (Pg. 636, Pr. 111)
4. In the alternative and without prejudice, it is submitted that this Hon'ble Court in the case of *Trimurthi Fragrances*<sup>4</sup> has held that the majority opinion by a Bench is not the opinion of the judges who have delivered the majority opinion but is of the Bench constituting all the judges sitting on the Bench.
  5. It is pertinent to note that all the Hon'ble judges<sup>5</sup> in *Bangalore Water Supply* held that the definition of the expression 'industry' under section 2(j) of the Industrial Disputes Act, 1947 is applicable only till a new law is made by the Parliament. The Parliament has enacted the Industrial Relations Code, 2020 and the expression 'industry' has been defined in section 2(p) which came into force on 21.11.2025. The Industrial Disputes Act, 1947 has been repealed vide section 104(1)(c). Thus, any interpretation of the expression industry under section 2(j) of the Industrial Disputes Act, 1947 would have bearing only on pending litigation between the workman and the employer and any restrictive meaning would affect the vested right of the workman.
  6. It is submitted that the triple test laid down in para 140, namely, (i) systematic activity (ii) cooperation between employer - employee and (iii) production or distribution of goods or services are **inherent, essential, crucial, vital and necessary** for all business, trade, undertaking, manufacture or calling of employers mentioned in section 2(j). Alternatively put, no business, trade, undertaking, manufacture or calling of employers can be carried out unless there

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<sup>1</sup> *AMU v. Naresh Agarwal*, (2025) 6 SCC 1

<sup>2</sup> *UOI v. Tulsiram Patel*, (1985) 3 SCC 398

<sup>3</sup> *Mafatlal Industries Ltd. and Ors. vs. Union of India*, (1997) 5 SCC 536

<sup>4</sup> *Trimurthi Fragrances (P) Ltd. v. State (NCT of Delhi)*, (2024) 20 SCC 709, Para 19, 28 and 29.

<sup>5</sup> Hon'ble Mr Justice Krishna Iyer (Para 139); Hon'ble Chief Justice MH Beg (Para 168); Hon'ble Mr Justice Chandrachud (Para 175); Hon'ble Mr Justice Jaswant Singh (Para 187)

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is systematic activity, cooperation between employer - employee for production or distribution of goods or services. Thus, the judgment of this Hon'ble Court in *Bangalore Water Supply* merely explains the expression 'industry' and does not give any expansive definition of the term as sought to be argued.

7. The definition of the expression 'industry' in the case of *Bangalore Water Supply* has stood the test of time and has been consistently followed. A list of judgements which have followed the said ratio has been filed along with Written Submission. (Vol II Page 261-271).
8. It is only in two cases that the correctness of the judgement in *Bangalore Water Supply* has been doubted by subsequent Benches, details of which are as follows:
  - a. In *Coir Board v Indira Devai*<sup>6</sup>, a Bench of two Hon'ble Judges has doubted the correctness and referred the matter to a Bench of nine Hon'ble Judges. Subsequently a Bench of three Hon'ble Judges<sup>7</sup> in the same case refused to make a reference.
  - b. In *State of U.P. v Jai Bir Singh*,
    - i. a Bench of three Hon'ble judge<sup>8</sup> referred the matter to a larger bench by merely stating that the matter is of considerable public importance, to be decided by a larger Bench.
    - ii. a Bench of five Hon'ble Judges<sup>9</sup> made a reference to a larger bench by a detailed judgement.
    - iii. a Bench of seven Hon'ble Judges<sup>10</sup> has merely agreed with the views expressed by the five judge Bench.
9. That the five Judge Bench of this Hon'ble Court in *Jai Bir Singh*<sup>11</sup> has doubted the correctness of the judgement of this Hon'ble Court in *Bangalore Water Supply* Case primarily on the ground that the views expressed by *Hon'ble Mr Justice Krishna Iyer* is on behalf of three Hon'ble Judges and is not a majority opinion, and that *Chief Justice MH Beg* delivered the judgement on the last day of his

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<sup>6</sup> *Coir Board v Indira Devai* (1998) 3 SCC 259.

<sup>7</sup> *Coir Board v Indira Devai* (2000) 1 SCC 224.

<sup>8</sup> *Vol. VB, Page 92*

<sup>9</sup> *Vol VB, Page 94*

<sup>10</sup> *Vol VB, Page 123*

<sup>11</sup> *State of UP v Jai Bir Singh* (2005) 5 SCC 1.

retirement and also did not have the benefit of the judgement of *Hon'ble Justice Chandrachud* and *Justice Jaswant Singh*. It is submitted that these are not valid reasons for reconsideration of a larger Bench decision.

10. It is submitted that on the principle of '**Stare Decisis**', the judgment of this Hon'ble Court in *Bangalore Water Supply* does not require reconsideration as it has stood the test of time by various subsequent pronouncements except on two occasions. A binding precedent followed over a long period of time and reaffirmed in subsequent judgements should be reconsidered only under the following circumstances:

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

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

- a. *NJAC Judgement*<sup>12</sup> judgement by Hon'ble Mr Justice *Justice Lokur* page 572 para 660, 661
- b. *Waman Rao vs. Union of India*<sup>13</sup> page 392 para 37
- c. *Shah Faesal vs. Union of India*<sup>14</sup> page 10 para 17, 18

11. It is erroneous to contend that the judgement of this Hon'ble Court in *Bangalore Water Supply* is workman centric. The legislative aim behind the enactment of

<sup>12</sup> *Supreme Court Advocates-on-Record-Association v Union of India*, (2016) 5 SCC 1

<sup>13</sup> *Waman Rao v. Union of India*, (1981) 2 SCC 362.

<sup>14</sup> *Shah Faesal v. Union of India*, (2020) 4 SCC 1.

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Industrial Disputes Act has been explained by this Hon'ble Court in *Lenin Kumar Ray*<sup>15</sup>

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

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

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<sup>15</sup> *Lenin Kumar Ray v. Express Publications (Madurai) Ltd.*, 2024 SCC OnLine SC 2987