IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 897 OF 2002

IN THE MATTER OF:

STATE OF UTTAR PRADESH ..APPELLANT

VERSUS

JAI BIR SINGH ..RESPONDENT

VOLUME-1

[WRITTEN SUBMISSION ON BEHALF OF PETITIONERS/APPELLANTS]

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ADDITIONAL WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER: STATE OF UTTAR PRADESH.

(PAPER-BOOK)

(For Index: Please See Inside)

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DATED: 09.03.2026

IN THE SUPREME COURT OF INDIA
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WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER: STATE OF UTTAR PRADESH.

1. The Bangalore Water supply Judgment lays down an over expansive definition of the term 'Industry' and therefore does not lay down correct law.

1.1 The Legislative and Judicial journey of defining the term 'Industry' under the Statue(s).

1.1.1 Legislative Definition 'Industry'

1.1.1.1 Trade Unions Act, 1926

{Sl. 1, @Pg. 1-52, Volume-IV/Statutory Enactments}

The Act didn't define the term industry however; it used the term 'Industry' to define 'workmen' as all persons employed in trade or industry. The section 2 (g) was inserted in West Bengal Amendment @ Pg no. 9 of Volume-IV/Statutory Enactments is reproduced as under;

S. 2(g) "trade dispute" means any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises.

1.1.1.2. Section 2(j), Industrial Dispute Act, 1947

{Chapter-1-@Pg. 76, Volume-IV/Statutory Enactments}

'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;

1.1.1.3. Industrial Disputes (Amendment) Act, 1982

Amendment definition:

Section 2 (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, but does not include—***

(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 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.***

1.1.1.4. Industrial Relations Code, 2020

(Passed by both houses) (notified in November 2025)

(legislation for amalgamating, simplifying and rationalizing the relevant provisions of—

(a) the Trade Unions Act, 1926;

(b) the Industrial Employment (Standing Orders) Act, 1946; and

(c) the Industrial Disputes Act, 1947.

Section 2(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 organizations 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.

1.1.2 Judicial Definition of 'Industry'

1.1.2.1 D. N. Banerji vs P.R. Mukherji, (1952) 2 SCC 619

Quorum Of Judges: Patanjali Sastri,C.J and B.K Mukherjea, Chandrashekahara Aiyar, Vivian Bose and Ghulam Hasan, JJ.

{Sl. 1, @Pg. 1-12, Volume-V/ Precedents}

Though municipal activity cannot be truly regarded as 'business' or 'trade', yet the definition in the ID Act includes also disputes that might arise between municipalities and their employees in branches of work that can be said to be analogous to carrying out of a 'trade'

or 'business', though they are carried on with the aid of taxation and no immediate material gain by way of profits is envisaged. The court further held that neither profit motive nor investment of capital is a sine qua non or necessary element in the modern conception of industry.

(Relevant paragraphs: 7,8,9,12,20,26)

1.1.2.2. The State of Bombay and Ors. vs The Hospital Mazdoor Sabha & Ors., AIR 1960 SC 610;1960 SCC OnLine SC 44

1. Whether the provisions of the industrial disputes act are applicable to hospitals?
2. Whether the definition of industry applies to the hospital or not?
3. Whether the retrenchment order owing to termination of two employees is invalid under non- compliance of section 25F of the Industrial Disputes act?

   It was held that Section 2(j) provides that 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.

Court excluded the sovereign actions from the purview of section 2(j) and said that, India is a welfare state and not being a capitalist economy, there has to be limit on the scope of section 2(j).

(Relevant paragraphs: 8,10,14,15,17,19,22)

1.1.2.3. Corporation of the City of Nagpur Vs. its. Employees, AIR 1960 SC 675

Issue: Various departments of the Nagpur City Corporation and whether they are industry?

Out of the multiple departments, the State Industrial Court has held that all the departments except those pertaining to (i) assessment and levy of house tax, (ii) assessment and levy of octroi, (iii) removal of encroachment and pulling down of dilapidated houses, (iv) maintenance of cattle pounds, and (v) prevention and control of food adulteration, are industries.
(Relevant paragraphs: 2,5,6,7,12,13,15,16,18,21,22)

1.1.2.4. University of Delhi & Ors. vs AR Ramnath & Ors. AIR 1963 SC 1873

Quorum Of Judges: Justice PB Gajendragadkar, KN Wanchoo , KC Das Gupta,JJ.

{Sl. 14, @Pg. 334-345, Volume-V/ Precedents}

The question was whether bus drivers employed by the University were workmen. The concept of service was

narrowed and it was held that the educational institutions were not an industry. Their aim was education and the teacher's profession were not to be assimilated to industrial workers.

(Relevant paragraphs: 4,5,10,11,13,15,17)

1.1.2.5. Secretary Madras Gymkhana Club Employees Union vs Management of Gymkhana Club, AIR 1968 SC 554

Quorum Of Judges: Justice M Hidayatullah, V Bhargava and CA Vaidyalingam, JJ.

{Sl. 22, @Pg. 412-428, Volume-V/ Precedents}

It was observed by the Court that, though the activity of the club might be falling in the second part of the definition in as much as the work of the club was conducted with the aid of the employees who followed a 'calling' or an 'avocation', it could not be described as 'trade' , 'business', 'manufacture' or 'calling' of the members of the managing committee of the club. It was also held that the activity of the club was not an 'undertaking' analogous to trade or 'business' as this element was completely missing in a 'members' club. This non-proprietary club, therefore, was held to be not 'Industry'.

(Relevant paragraphs: 4,5,10,11,19,22,24,25,26,27,33)

1.1.2.6. Management of Safdarjung Hospital New Delhi vs Kuldeep Singh Sethi, (1970) 1 SCC 735

Quorum Of Judges: Justice M Hidayatullah, C.J and J.C Shah, K.S Hegde, A.N Grover, A.N Ray and I.D Dua JJ.

{Sl. 25, @Pg. 450-463, Volume-V/ Precedents}

The Tuberculosis Hospital is not an independent institution. It is a part of the Tuberculosis Association of India. The hospital is wholly charitable and is a research institute. The dominant purpose of the Hospital is research and training, but as research and training cannot be given without beds in a hospital, the hospital is run. Treatment is thus a part of research and training. In these circumstances, the Tuberculosis Hospital cannot be described as an industry. The order of the Additional Industrial Tribunal, Delhi on the preliminary point must be reversed.

Note: In the Safdarjung Hospital case [(1970) 1 SCC 735 : (1971) 1 SCR 177] the decision of this Court in the case of State of Bombay v. Hospital Mazdoor Sabha [AIR 1960 SC 610 : (1960) 2 SCR 866 : (1960) 1 LLJ 251] was dissented from and held to be not laying down the law correctly.

(Relevant paragraphs: 13,14,28,29

1.1.2.7. Dhanrajgiri Hospital vs Workmen, (1975) 4 SCC 621

Quorum Of Judges: Justice A. Alagiriswami and N.L. Untwaliya,JJ.

{Sl. 32, @Pg. 2042-2045, Volume-V/ Precedents}

In our judgement even on the findings of primary facts recorded by the Tribunal the ratio of the decision of this Court in Management of Safdarjung Hospital, New Delhi v. Kuldip Singh Sethi [(1970) 1 SCC 735 : (1971) 1 SCR 177] squarely applies to this case. Following the said decision the appeal has got to be allowed.

Taking into consideration the entire facts and circumstances of this case we have no doubt in our mind that on application of the principles of law enunciated by this Court in the case of Safdarjung Hospital [(1970) 1 SCC 735: (1971) 1 SCR 177] it
must be held that the appellant is not engaged in any industry within the meaning of the Industrial Disputes Act.

(Relevant paragraphs: 2,4,7,8)

1.1.2.8. Bangalore Water Supply and Sewage Board vs. A. Rajappa & Ors., (1978) 2 SCC 213

Krishna Iyer J. in leading judgement laid down the principles for triple test and predominant nature test for identifying 'Industry' under the ID Act:

Relevant paragraphs:141,142,162,163,167,176,179,180.

1.1.2.9. Chief Conservator of Forests v. Jagannath Maruti Kondhare, (1996) 2 SCC 293

The Hon'ble Court was of the view that the bio aesthetic development of the park cannot be regarded as a part of inalienable or inescapable function of the State for the reason that the scheme was intended even to fulfil the recreational and educational aspirations of the people. We are in no doubt that such a work could well be undertaken by an agency which is not required to be even an instrumentality of the State. This being the position, it was further held that the said scheme undertaken by the Forest Department cannot be regarded as a part of the sovereign function of the State, and so, it was open to the respondents to invoke the provisions of the State Act.

1.1.2.10. State of Gujarat and Others Vs Pratam Singh Nar Singh Parmar, 2001 9 SCC 713

In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment

where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in Jagannath Maruti Kondhare [(1996) 2 SCC 293: 1996 SCC (L&S) 500]
to hold that the Forest Department could be held to be an 'Industry'.

1.1.2.11. Union of India vs Shree Gajanan Maharaj, (2002) 5 SCC 44

{Sl. 129, @Pg. 4059-4065, Volume-V/ Precedents}

The Central Government gave the following reasons as to why the amendment to the definition of industry could not be given effect to:

1. That a proposal for modification of the definition of the term 'Industry' was placed in the Standing Labour Committee and thereafter the issue was referred to the new Bipartite Committee to formulate a comprehensive Industrial Relations Bill. It was wound up as no consensus emerged.
2. That after finalizing the proposals, it was sent to the Ministry of Law, Justice and Company Affairs for the opinion of the Department of Legal Affairs. The Department of Legal Affairs have concurred in the proposals and a draft bill is being drafted by the Legislative Department, Ministry of Law.

   Relevant Paras: 4 and 8.

1.1.2.12. State of UP vs Jai Bir Singh, (2005) 5 SCC 1

Quorum Of Judges: N Santosh Hegde, K.G Balakrishnan ,D.M .Dharmadhikari, Arun Kumar and B.N. SriKrishna, JJ.

{Sl. 149, @Pg. 4320-4356, Volume-V/ Precedents}

The Judgment of Bangalore Water Supply (supra) referred to a larger bench for reconsideration of where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words in Section 2(j) of the Act.

(Relevant paragraphs:33,35,37,38,39,41)

1.1.2.13 Legislative Supersession of the Earlier Interpretation of —Industry.

In view of the above exhaustive definitions of industry provided under the relevant statutory enactments, the earlier judicial ratio can no longer be regarded as good law. In particular, the comprehensive definition incorporated under the Industrial Relations Code, 2020, which has been notified and brought into force with effect from **21 November 2025**, further reinforces the legislative intent to provide a complete statutory framework. Consequently, the statutory framework governing the interpretation of the term industry now stands comprehensively codified under the aforesaid Code, thereby superseding the earlier interpretative position.

1.2 THE SEVEN JUDGES BENCH JUDGMENT IN BANGALORE WATER SUPPLY RUNS INTO THREE CONCENTRIC APPROACHES DELIVERED OVER A PERIOD OF TIME-

1.2.1 Issue: Non uniform application of rule of noscitur a sociis

i. **J. Krishna Iyer (Majority Judgement)**

J. Iyer applies this principle to read down 'undertaking' in S. 2 (j) to conform to the restrictive characteristic of the rest of the definition. It is applied restrictively with solely worker in focus and excluding the commercial characteristic. (Para 13).

J. Iyer also relies on observations from the Bannerjee's case, in the Judgement of J. Chandrashekhar Iyer while advocating a wider interpretation, though the said observations are based on rejection of the applicability of principles of noscitur-a-sociis.

ii. CJ. Beg

J. Beg rules out the applicability of this principle and states that we cannot cut down the ambit of the last part of the definition by searching for a pre-dominant meaning in the first part unless we are determined at the outset to curtail the scope of the second part somehow.

iii. J. Y.V. Chandrachud

J. Chandrachud rules out the applicability of this principle on the basis that it is only made applicable when there is doubt in the language, however there is no doubt as to the meaning nor the amplitude.

iv. J. Jaswant Singh and J. Tulzapurkar (Dissenting Judgment)

J. Jaswant while accepting the applicability of the principle at hand, differs in its application. They include systematic commercial activities by private entrepreneurs with the cooperation of their employees for the production or distribution of goods or material services to whole or part of the community. (Para 185).

1.2.2. Issue: Profit and Motive as a relevant criteria

i. **J. Krishna Iyer (Majority Judgement)** J. Iyer rejects profits and motive as a relevant criterion but contradicts himself while dealing with ashrams and Orders of gurus, free legal or medical service. (Para 110, 142 (c)).

ii. However, he rejects the same thesis of selfless service.

iii. **CJ. Beg Rules that it is clear there is no mention of profit motive in the section under S. 2(j).**

iv. J. Y.V. Chandrachud

Rules that the twin conditions of profit motive and capital investment is irrelevant for determining whether an activity is an industry.

v. J. Jaswant Singh and J. Tulzapurkar (Dissenting Judgment).

Ruled that the definition would be limited to systematic commercial activities by private entrepreneurs with the cooperation of their employees for the production or distribution of goods or material services to whole or part of the community.

1.2.2.1 <u>Issue: Inclusion of sovereign function:</u>

J. Krishna Iyer (Majority Judgement)

i. Even though the Court was not concerned with Departments of Government charged with essential constitutional functions, J. Iyer ruled that only primary and inalienable functions sovereign functions are excluded from industry.

ii. Though J. Iyer applies the above-mentioned test, there is no criterion mentioned for determining or identifying functions which are primary and 'inalienable'.

iii. J. Iyer also includes employees assisting in sovereign functions, unless they are engaged and supportively employed in the discharge of Constitutional government.

iv. The Judgement has erred in that a vague test is laid down. Most of the Government function are alienable in the sense of delegation and some

incidental or supplemental outsourcings are also possible without destroying the predominant character.

v. **C.J. Beg** clearly states that the term 'sovereign' needed to be replaced by 'government function' and he does not adopt the primary and inalienable test but refers to service covered by separate Rules and Constitutional Provisions such as Article 310-311 for exclusion.

vi. J. Y.V. Chandrachud3.3.1 Ruled that the Sovereign function test is liable to be rejected as it is in conflict with the activity test.

vii. J. Jaswant Singh and J. Tulzapurkar (Dissenting Judgement)

viii. Ruled that all Governmental function should be excluded.

1.2.3. Issue: Pre-dominant Activity Test

i. **J. Krishna Iyer (Majority Judgement)**

ii. J. Iyer rules that the status of the institutions is based on the nature of work of employee.

iii. J. Iyer has further erred as while adopting the pre-dominant Activity Test University is included as a number of ancillary activities may be industry.

iv. CJ. Beg Beg ruled that if industrial dispute could arise, the area could be industry, or that the nature of the activity would be determine by the conditions which give arise to such disputes.

v. J. Y.V. Chandrachud

Ruled that the nature of the activity is the determining factor and that does not change according to who undertakes it.

1.3 THE HISTORY BEHIND THE ENACTMENT OF INDUSTRIAL DISPUTE ACT, 1947: ITS PURPORT AND OBJECT.

1.3.1. Object of the Act-Any unilateral interpretation seeking to overly favor only the employee would most respectfully be against the purport of the ID Act. The ID Act aims to balance between the interests and welfare of the employee, employer as well as national and public interest.

1.3.2. On a fundamental level- industry consists of/ runs on meticulous co-operation, equilibrium and collaboration of Capital and Labor and its smooth

running is in the interest of both, and primarily the nation. Industry as a term cannot be separated from the pursuit of economic and commercial activity and any interpretation has to be in furtherance of that harmony. There is nothing in S. 2 (j) to rule out 'seeking a return' as relevant criterion. In fact, the basis of the core of trade, business or manufacture is seeking a return, and thus the same is inseverable from 'Industry'.

1.3.3. As a result of the Bangalore Water Supply Judgement, and the over-expansive interpretation of S. 2 (j) therein, the Industrial Disputes Act has been made applicable to organizations and pursuits which were not intended to be covered by the architecture set up under the industrial disputes Act. this expanse tilted the harmonious balance, panning out to be inhibiting and counterproductive, not merely to the organizations and pursuits but also to employees, by the curtailment of employment opportunities and shifting of large batches of workforce to contractual and outsourced engagements. any over bearing interpretation, which goes over and beyond the purpose and purport of the act, is unsustainable and must be eschewed.

1.3.4. The objective as envisaged under the ID Act is not merely for protecting and safeguarding the rights of the employees, rather the object is to provide for an efficacious alternate remedy, while ensuring that day-to-day disputes between the employer and the employee do not hamper the nation's industrial growth and economic considerations.

1.3.5. In fact, it would be apposite to submit that the prime objective is to safeguard public and national interest by ensuring that there is no exploitation of labour while at the same time, there is no breakdown of industrial activities due to disputes between employer and employee. Therefore, any interpretation must

balance the interest of the workers, the employer and the national and public interest of the Nation. Thus, any interpretation which aims to go beyond the purport of the Act, or which aims to skew/tilt the interpretation overly favouring the employee over the other two is unsustainable as it is against the primary objective of the Act itself.

1.3.6 **Elimination of Profit-Motive-Chilling effect by over-breadth.**

1.3.6.1 The elimination of profit motive has led to a large number of philanthropic charitable activities, despite not being strictly industries, falling under the umbrella of the industrial disputes act. This is bound to have a chilling effect and resultant restraint and cessation of many welfare activities, depriving the community of considerable benefit and the employees of a fair livelihood.

1.3.6.2. There are many activities which are undertaken not with a view to secure any monetary returns. Such activities would not normally be labelled as industrial activities but social welfare activities undertaken by the States in larger public interest, but for the wide interpretation given judicially to the term industry.

1.3.6.2 Small voluntary welfare organized/cooperative activities like preparation of spices, *papads*, pickles etc by rural or underprivileged women, are neither

organized like industries and nor do they have the means or wherewithal to run them as industries. The income earned by these activities was distributed among the women who are given such work. These citizens would otherwise find it extremely difficult to join the regular workforce and impossible to secure a market for their products. Any over-breadth in the interpretation of basic definition of industry is bound to act as a restraint and inhibitor for such meaningful, impactful, good-heart pursuits.

1.3.7 Intrinsically linked with economic policy-

1.3.7.1 It is well settled law that the merit of economic decisions made by the Government is excluded from the scrutiny of Judicial Review, as it is best left to the expertise of the experts and the wisdom of the legislature.

1.3.7.2 Similarly, the intrinsically linked nature of industry with economic, trade and commercial considerations of the Nation would necessitate a free hand from the scrutiny of Judicial Review. The legislature must be left free to make decisions in consultation with experts and with legislative wisdom in accordance with the need and necessity of the society at any given point. Therefore, the mandate of *Bangalore Water Supply Case*, which instills the rigors of the three tests, stifles the power of the legislature to freely legislate and hampers the

overall decision making and adaptability of economic/trade/industrial policy making.

1.3.7.3 Such freedom and adaptability are crucial taking into consideration that international events, out of the scope of our sovereignty, have an effect on Indian Industry, trade and economic policies. As a by-product of our open-market economy, our economy is more closely linked to the world economy than ever, and the butterfly effect of external factors regularly effects Indian industries, trade and economic policies.

1.3.7.4 As an illustration, the Russia-Ukraine war led to rising petroleum costs which in turn adversely impacted all industries using petroleum as fuel either for manufacture, or for providing services. In order to balance and to ensure the survival of its industries, our National economic and trade stratagem had to be evolved. This, however, can only be possible if the legislature is given adequate freehand when dealing with economic, commercial, trade and industrial policy decision making.

1.3.8. Law is not static but dynamic in nature and must respond to the needs of the society.

1.3.8.1 It is well settled that law is not static and is dynamic in nature, therefore, any interpretation which aims to stifle/throttle the legislature, cannot be sustained.

1.3.8.2 Any interpretation of a Law/Judgement which is static in nature, i.e. has not evolved with the times, and is at odds with the present scenario, cannot be sustained.

Law must always grow and develop akin to a natural organism in order for its suitability in modern day. Dr. B.R. Ambedkar famously stated that our constitution is a living document, similarly, our laws have to be interpreted in order to be suitable to today's society.

1.3.8.3 It is the basis of all legal jurisprudence that law and society are dependent on each other, you cannot have one without the other. Therefore, any law/judgement must necessarily be suitable for the society at hand. If due to paucity of time, the practical reality on the basis of which the law stood undergoes any fundamental changes, then the law/judgement must be made to apply suitably or will necessarily be rendered unsustainable.

1.3.8.4 In our present scenario, India, with the passing of time since the *Bangalore Water Supply Case (1978)*, 2 SCC 213 has changed itself from a socialist-welfare state to a regulated and controlled open market economy, therefore, the judgement, which is based on a socialist and welfare-based approach is not in sync with the reality of labor, industrial and service practices prevalent in modern India and is thus rendered redundant.

1.3.8.5 The above argument is further strengthened by the fact that even despite the judgement being in effect, todays employer-employee relations have essentially circumvented the rigors placed in effect by the Judgement. Today, even regular cadres are being supplanted with contractual workers and out-sourcing to

private companies/individuals. These practices have developed over time organically in order to meet the competing demands of modern society, despite the *Bangalore Water Supply Case.* Interestingly enough, even institutions discharging constitutional functions are outsourcing daily jobs/assignments to private companies/individuals/partnerships for ease of convenience keeping in time with modern day practices.

Therefore, the three tests laid down in *Bangalore Water Supply* namely: **Sovereign Function test, Pre-dominant Activity test and Activity in Nature of Industry** are simultaneously overlapping and at odds. The mandate of the *Bangalore Water Supply Case* laying down the three vague tests which are simultaneously overlapping and at odds leads to chaos and confusion. there is no clarity as to how any activity must be construed if it is at odds with one test however will fall within the other two.

1.4 THE PARADIGM SHIFT IN THE NATURE OF INDIAN ECONOMY AND THE EMPLOYMENT CADRE IN THE WORKING CLASS

1.4.1 The financial and economic policies of India went through a significant change post liberalization of the Indian economy in 1991. Since independence, India has followed the mixed economy framework by combining the advantages of the market economic system with those of the planned economic system. India's economic

reforms began slowly in the 1980s, and then accelerated under the pressure of an external crisis at the beginning of the 1990s.

1.4.2 The Hon'ble Supreme Court held in **CCI vs Bharti Airtel ltd. & ors., (2019) 2 SCC 521**, that in the last 60-70 years, economic policy of this country had travelled from laissez faire to mixed economy to the Present era of liberal economy with a regulatory regime. With the advent of a mixed economy, there was mushrooming of the public sector and some of the key industries like aviation, insurance, railways, electricity/power, telecommunication, etc. were monopolized by the State. License/permit raj prevailed during this period with strict control of the Government even in respect of those industries where private sectors were allowed to operate. ***However, the Indian economy experienced major policy changes in early 90s on LPG Model i.e. liberalization, privatization and globalization. With the onset of reforms to liberalize the Indian economy, in July 1991, a new chapter has dawned for India. This period of economic transition has had a tremendous impact on the overall economic development of almost all major sectors of the economy.***

1.4.3 Moreover, the economy of a nation cannot be seen in isolation and predominantly same over decade. This Hon'ble Court in **Coal India Ltd. v. CCI, (2023) 10 SCC345** has held as under: ***" 99.*** *We have already noticed the report of the Raghavan Committee. We have*

also perused the scheme of the Act. We have culled out the consequences, which flow from the Nationalisation Act. The economic condition of the country at the time of its Independence in 1947 stands in stark contrast to its condition at varying points of time thereafter. ***In the initial stages, for understandable reasons, particularly, bearing in mind the need for the State to be the prime mover of the economy, huge investments by the State had to be made. Public sector units became the arm for the*** State to realise its economic goal, which, at the earlier point of time, was to consist of building up the requisite infrastructure. The public sector units fulfilled more roles than one. Not only were the units to produce goods but they were also burdened with the goal of providing employment. The economic policy of the State had a distinct socialist flavour. No doubt, under the Five-Year Plans, what was contemplated was, a mixed economy. The economy was highly regulated. Out of sheer necessity, perhaps, taxation had to be maintained at high levels. From being a toddler, the economy slowly grew. As the life of the nation progressed, the aspirations of its people, not unnaturally, also expanded. The economic life of a nation can never be perceived in isolation. No nation can remain unaffected by the changes in the state of the world economy. Policies, which are suitable at a given point of time, are not cast in stone. Each generation of people have the right as also the duty to revisit economic policies which found favour with the past. The present cannot put posterity in chains. Equally, the past cannot hold the present hostage to ideas which would then degenerate into what was once

original and suitable into dogma which no longer can serve the people."

1.4.4 The process of economic liberalization in India began in the year 1991 with the objective of introducing the new neo-liberal policies including opening of international trade and investment, deregulation, initiation of privatization, tax reforms, and inflation-controlling measures.

1.4.5 It is therefore a clear and well considered shift in the fundamental economic policy of the nation for the first 4 decades in which the Banglore Water Supply, 1978 judgment was based and after the first 04 decades, from a communist socialist and heavily regulated economy to a regulated and calibrated open market.

1.4.6 This change in the nature of economy has led to a paradigm shift in the employer- employee relationship and the whole employment status within the state, where along with the regular cadre, there is a huge amount of work that is being carried out by contractual cadre and outsourcing has become the norm.

1.4.7 This is because the current economic setup is based on the concept of a ―Gig Economy, i.e. a labour market that relies heavily on temporary and part-time positions filled by independent contractors and freelancers rather than full-time permanent employees. A study by Niti Aayog estimates that in 2020- 21, 77 lakh (7.7 million)

workers were engaged in the gig economy. The gig workforce is expected to expand to 2.35 crore (23.5 million) workers by 2029-30.[1]

1.4.8 Contractual/ outsourcing jobs have been growing in prevalence and have become increasingly common and accepted in most Government departments in order to enhance efficiency and economy. There are detailed procedures laid down for procurement services through outsourcing, including e-procurement in Chapter 6 of the GFR 2017 and the ―Manual for Procurement of Consultancy & Other Services, 2017.[2]

1.4.9 The Hon'ble Supreme Court has also recognised the distinction between contractual workers and those who are appointed as regular employees as per the relevant service rules and regulations. In the recent case of **Ganesh Digamber Jambhrunkar v. State of Maharashtra, 2023 SCC OnLine SC 1417**, the Hon'ble Supreme Court has established that persons appointed on a contractual basis can have no vested legal right to be appointed in the respective posts on regular basis.

1.4.10 In another recent case of **Doordarshan Prasar Bharti Corpn. of India v. Magi H. Desai, 2023 SCC**

[1] NITI Aayog. (2022). India's Booming Gig and Platform Economy: Perspectives and Recommendations on the Future of Work. June, 2022, *available at* [https://www.niti.gov.in/sites/default/files/2022-06/Policy_Brief_India%27s_Booming_Gig_and_Platform_Economy_27062022.pdf].

[2] *Outsourcing of jobs in Government Departments,* Press Information Bureau, [https://pib.gov.in/Pressreleaseshare.aspx?PRID=1519434

OnLine *SC 336* which dealt with contractual employees of Doordarshan Prasar Bharti Corporation of India, this Hon'ble Court held that since neither the rule nor the regularisation scheme provided that services rendered as casual/contractual shall be treated as temporary service and/or the same shall be counted for the purposes of pensionary/service benefits, the respondent would not be entitled to the same benefit in absence of any scheme in the department in which the respondent rendered her services.

Thus, the emerging changes in the economy have eclipsed the traditional employer-employee relationship. There is emergence of contractual and outsourcing jobs which have a distinct job profile and service conditions which cannot be compared to those of regular cadre employees.

1.5 THE CONSTITUTIONAL COURTS ARE DUTY BOUND TO IDENTIFY PRECEDENTS THAT HAVE BECOME REDUNDANT AND TO EFFACE THEIR EFFECT.

1. The Legislative intent should be determined as of the time of legislation goes into effect. But surrounding circumstances and situations occurring after the enactment of the statute may be of great or even conclusive assistance in determining a meaning which was intended to be conveyed. Legislative standards are

generally couched in terms which have considerable breadth. Therefore, a statute may be interpreted to include circumstances or situations which were unknown or did not exist at the time of the enactment of the statute. The Hon'ble Supreme Court in ***Senior Electric Inspector v. Laxminarayan Chopra,*** **1961 SCC OnLine SC 63 : (1962) 3 SCR 146 had held as under:** ***"7.*** *The second reason given by the learned Judges is that the expression "telegraph line", as used in Section 34(2)(b) of the Indian Electricity Act, has, in the absence of any new definition in that Act, to be given the same sense as the Legislature had intended in 1885 by the definition of that expression in the earlier Act. This reason is based upon the maxim contemporanea expositio est optima et fortissima in lege (contemporaneous exposition is the best and strongest in law). To state it differently, in the year 1885 the Legislature could not have dreamt of the future discovery of wireless telegraphy and, therefore, could not have intended to use the expression "telegraph line" in a comprehensive sense so as to take in electric wires of a receiving station of wireless telegraphy.*

It is necessary to consider the scope of the said maxim in its application to the interpretation of modern statutes. In Craies on Statute Law, 5th Edn. the said rule is explained in the words of Coke thus at p. 77:

"This and the like were the forms of ancient Acts and graunts, and the ancient Acts and graunts must be construed and taken as the law was holden at that time when they were made". The discussion ended with the following words at p. 79:

"In Assheton Smith v. Owen [1906 1 Ch 179, 213] Cozens-Hardy, L.J., said: I do not think that the doctrine of contemporanea expositio can be applied in construing Acts which are comparatively modern", and the Court declined to apply the rule to the interpretation of local Acts of 1793 and 1800."

In Halsbury's Laws of England, 2nd Edn. Vol. 32, it is stated in the context of telegraph legislation thus at p. 4:

"The fact that new methods of telegraphy have been invented since the date of passing of the Acts containing the definition does not prevent the application of the Acts to such methods, provided that they answer the requirements and fall within the terms of the definition."……Decided cases accepted the said liberal approach in construing modern statutes. In Attorney General v. Edison Telephone Company of London [1880 6 QBD 244] , a telephone was held to be a"telegraph" within the meaning of the Telegraphs Acts, 1863 and 1869, although the telephone was not invented or contemplated in 1869. Stephen, J., observed at p. 254:

"Of course no one supposes that the legislature intended to refer specifically to telephones many years before they were invented, but it is highly probable that

they would, and it seems to us clear that they actually did, use language embracing future discoveries as to the use of electricity for the purpose of conveying intelligence."

The Privy Council in In re Regulation and Control of Radio Communication in Canada [(1932) AC 304] held that broadcasting fell within the meaning of the expression "telegraphs" in Section 92 of British North America Act, 1867, though at the time when that Act was made broadcasting was not in vogue. In King v. Brislan, Ex parte Williams [(1935) 54 CLR 262] the question was whether a law of the Commonwealth Parliament with respect to radio broadcasting was one with respect to "Postal, telegraphic, telephonic and other like services" under Section 51(5) of the Australian Commonwealth Act, and the Court held that the words were wide enough to take in radio broadcasting. In James v. Commonwealth of Australia [(1936) AC 578, 614] , Lord Wright has stated the principle in felicitous language thus:

"... the meaning of the words changes, but the changing circumstances illustrate and illuminate the full import of that meaning ..... "

2. In *State* v. *S.J. Choudhary* [*State* v. *S.J. Choudhary*, (1996) 2 SCC 428 : 1996 SCC (Cri) 336] , this Court had referred to a passage contained in *Statutory Interpretation* by Francis Bennion, 2nd Edn. for holding that the Evidence Act, 1872 is by its very

nature is an ―ongoing Act‖. Para 10 of the judgment is reproduced below: (SCC pp. 433-34)

"10. … „(2) It is presumed that Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (an updating construction). While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law."

3. Moreover, the Hon'ble Supreme Court in *All Kerala Online Lottery Dealers Assn. v. State of Kerala,* (2016) 2 SCC 161 holds as under: ―48. *In the comments that follow it is pointed out that an ongoing Act is taken to be always speaking. It is also, further, stated thus: (pp. 618-19)*

In construing an ongoing Act, the interpreter is to presume that Parliament intended the Act to be applied at any future time in such a way as to give effect to the true original intention. Accordingly the interpreter is to make allowances for any relevant changes that have occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters. Just as the US Constitution is regarded

as "a living Constitution", so an ongoing British Act is regarded as "a living Act". That today's construction involves the supposition that Parliament was catering long ago for a state of affairs that did not then exist is no argument against that construction. Parliament, in the wording of an enactment, is expected to anticipate temporal developments. The drafter will try to foresee the future, and allow for it in the wording.

An enactment of former days is thus to be read today, in the light of dynamic processing received over the years, with such modification of the current meaning of its language as will now give effect to the original legislative intention. The reality and effect of dynamic processing provides the gradual adjustment. It is constituted by judicial interpretation, year in and year out. It also comprises processing by executive officials."

2. THE DEFINITION OF THE TERM 'INDUSTRY' UNDER 1947 ACT AND INDUSTRIAL CODE, 2020 ITSELF MAKES ABUNDANTLY CLEAR THAT SOVEREIGN ACTIONS ARE EXCLUDED.

2.1 COMPARATIVE ANALYSIS OF THE TERM 'INDUSTRY' AND TERMS OF SERVICE FOR THE WORKS IN AN ESTABLISHMENT AS DEFINED UNDER INDUSTRIAL DISPUTES ACT, 1947 ACT, UTTAR PRADESH INDUSTRIAL DISPUTES ACT,1947 AND THE INDUSTRIAL CODE 2020

A. *Definitions under* Section *2*

I. INDUSTRIAL DISPUTES ACT, 1947

i. Sec.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.

ii. Sec.2(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

iii. Sec.2[(ka) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on: Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is

or are an industry or industries, then,— (a) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking; (b) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;]

II. UTTAR PRADESH INDUSTRIAL DISPUTES ACT, 1947

i. Sec.2(k) "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workman

ii. Sec.2(l) "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen employers and employers, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any

person ; but does not include an industrial dispute concerning — (i) any industry carried on by or under the authority of the Central Government or by a Railway Company ; or (ii) such controlled industry as may be specified in the Industrial Disputes Act, 1947 ; or (iii) banking and insurance companies as defined in the Industrial Disputes Act, 1947 ; or (iv) a mine or an oil-field ;

III. INDUSTRIAL RELATIONS CODE, 2020

i. Sec.2(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 organizations 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;

ii. Sec.2(q) "industrial dispute" means any dispute or difference between employers and employers or between employers and workers or between workers and workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person and includes any dispute or difference between an individual worker and an employer connected with, or arising out of discharge, dismissal, retrenchment or termination of such worker;

iii. Sec.2(r) "industrial establishment or undertaking" means an establishment or undertaking in which any industry is carried on: Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then, —

(i) if any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking which is not carrying on or aiding the carrying on of any such activity, such unit shall be deemed to be a separate industrial establishment or undertaking;

(ii) if the predominant activity or each of the predominant activities carried on in such establishment or undertaking or any unit thereof is an industry and the

other activity or each of the other activities carried on in such establishment or undertaking or unit thereof is not severable from and is, for the purpose of carrying on, or aiding the carrying on of, such predominant activity or activities, the entire establishment or undertaking or, as the case may be, unit thereof shall be deemed to be an industrial establishment or undertaking;

B. Terms governing the Service Rules of the Workers in the Establishment.

I. INDUSTRIAL DISPUTES ACT, 1947 [CHAPTER IIA NOTICE OF CHANGE

Section 9A. Notice of change. —……

…… Provided that no notice shall be required for effecting any such change— (a) where the change is effected in pursuance of any 2 [settlement or award]; or (b) ***where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.***

Section 9B. **Power of Government to exempt.—** Where the appropriate Government is of opinion that the

application of the provisions of section 9A to any class of industrial establishments or to any class of workmen employed in any industrial establishment affect the employers in relation thereto so prejudicially that such application may cause serious repercussion on the industry concerned and that public interest so requires, the appropriate Government may, by notification in the Official Gazette, direct that the provisions of the said section shall not apply or shall apply, subject to such conditions as may be specified in the notification, to that class of industrial establishments or to that class of workmen employed in any industrial establishment.]

II. UTTAR PRADESH INDUSTRIAL DISPUTES ACT, 1947

Interpretation, etc. of standing orders Act No. 20 of 1946

11-C. If any question arises as to the application or interpretation of a standing order certified under the Industrial Employment (Standing Orders) Act, 1946 any employer or workman may refer the question to any one of the Labour Courts specified for the disposal of such proceedings by the State Government by notification in the official Gazette, and the Labour Court to which the question is so referred shall, after giving the parties an opportunity of being heard, decide the question and such decision shall be final and binding on the parties

III. INDUSTRIAL RELATIONS CODE, 2020

CHAPTER IV STANDING ORDERS

28. Application of this Chapter. —

(1) The provisions of this Chapter shall apply to every industrial establishment wherein three hundred or more than three hundred workers, are employed, or were employed on any day of the preceding twelve months.

(2) Notwithstanding anything contained in sub-section (1), the provisions of this Chapter shall not apply to an industrial establishment in so far as the workers employed therein are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government, apply.

Additionally, takeaways in relation to the adjudication / resolution of industrial disputes from the provisions are as follows:

2.1.1 The Industrial Relations Code, 2020 (**IR Code**) has altogether done away with reference as was present under both the Industrial Disputes Act, 1947 (S. 10) and the Uttar Pradesh Industrial Disputes Act, 1947.

2.1.2 The IR Code has also done away with Labour Courts and has instead provided for establishment of Industrial Tribunals which would be empowered to adjudicate the disputes brought forth them.

2.1.3 The definition of the term — 'industry' has now been expanded in view of the wide spectrum of activities which are being carried out in the economy keeping in mind the requirements of the present time.

2.1.4 As per Section 28 of the Industrial Relations Code, 2020 (**IR Code**), the provisions of the Chapter under 'Standing Orders' will not apply upon the Present Petitioner as the workers (Staff members) employed are governed by Civil Service Regulations.

3. THE SOVEREIGN AND SOCIAL WELFARE ACTIVITIES OF THE APPROPRIATE GOVERNMENT CANNOT BE CONSTRUED AS INDUSTRIAL ACTIVITY UNDER BOTH THE 1947 ACT AND INDUSTRIAL CODE 2020.

3.1 THE SCOPE OF DOMINANT NATURE TEST AND SOVEREIGN FUNCTIONS INTERPRETED BY JUDICIARY OVER A PERIOD OF TIME.

Sr. No.	Judgment
1.	T.N. Godavarman Thirumulpad Vs UOI & Ors,2024 INSC 178 Principle of Ecological Restitution States would be required to take steps for the identification and effective implementation of active restoration measures that are localized to the particular ecosystem that was damaged.
2.	T.N. Godavarman Thirumulpad Vs UOI & Ors, 2022 10 SCC 544 Duty of State to implement sustainable development based on inter-generational equity.
3.	Narinder Singh & Ors Vs Divesh Bhutani & Ors,AIR 2022 SC 3479

	Precautionary principle: A conjoint reading of Articles 21, 48A and 51-A(g) of the Constitution of India will show that the State is under a mandate to protect and improve the environment and safeguard the forests. The precautionary principle requires the Government to anticipate, prevent and remedy or eradicate the causes of environmental degradation including to act sternly against the violators.

4.	State of Gujarat & Ors. Vs. Pratamsingh Narsinh Parmar, (2001) 9 SCC 713 Department of Government cannot be held to be industry.
5.	Chief Conservator of Forests and others vs Jagannath Maruti Kondhare, 1996 2 SCC 293 Forest Department of the State Government undertaking bio aesthetic development of the park held as industry.

6.	Executive Engineer (State of Karnataka) Vs Somasetty and Ors., (1997) 5 SCC 434. Irrigation Department and Telecommunication Department not an industry.

7.	State of Bombay and others versus Hospital Mazdoor Sabha 1960 SCC OnLine SC 44
8.	Chief conservator of forests v. Jagannath Maruti Kondhare (1996) 2 SCC 293 Social forestry and afforestation schemes undertaken by the Forest Department of the State are not sovereign functions and constitute an — 'industry' under Section 2(j) of the Industrial Disputes Act.
9.	Sub-Divisional Inspector of Post v. Theyyam Joseph (1996) 8 SCC 489

	The Postal Department performing sovereign functions is not an — 'industry' under Section 2(j) of the Industrial Disputes Act, 1947.
10.	Physical Research Laboratory v. K.G. Sharma (1997) 4 SCC 257 PRL is a pure research institution engaged in governmental functions, not in the production or distribution of goods or services, therefore the ID Act was held inapplicable.

11.	General Manager, Telecom v. S. Srinivasa Rao, (1997) 8 SCC 767. Strict sovereign function test reaffirmed; welfare and commercial activities of the State are not sovereign functions.
12.	All India Radio v. Santosh Kumar & Anr., (1998) 3 SCC 237 All India Radio and Doordarshan perform sovereign functions of the state, not — 'industry' under section 2(j) of the Industrial Dispute Act

13.	Agricultural Produce Market Committee v. Ashok Harakuni (2000) 8 SCC 61 **(2JJ)** Regulatory functions of the Agricultural Produce Market Committee are not sovereign in nature.

14.	Union of India & Ors. Versus Central Govt. Industrial Tribunal & Anr., 2005 SCC OnLine Cal 132 If the activity is Systematic, organised, involves employer–employee cooperation, and produces goods/services to satisfy human wants, it would fall within the ambit of — 'industry'.
15.	B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Assn. & Ors, (2006) 11 SCC 731 The Court observed that the Karnataka Urban Water Supply & Drainage Board does not perform the State's sovereign functions.

3.2 The Constitutional And International Obligations of The State To Undertake Varied Nature Of Welfare Activities executed through Forest Department

3.2.1 **Article 48A And 51A must guide the Interpretation of Laws: the Hon'ble Supreme Court in Pradeep Krishen v. Union of India, (1996) 8 SCC 599** had held as under**:** *"15. Now as pointed out earlier, since Parliament had no power to make laws for the States except as provided by Articles 249 and 250 of the Constitution, the States were required to pass resolutions under Article 252(1) to enable Parliament to enact the law. After as many as 11 States passed resolutions to that effect, the Act came to be enacted to provide for the protection of wild animals and birds and for matters connected therewith or ancillary or incidental thereto. Even Articles 48-A and 51-A(g) inserted in the Constitution by the 42nd Amendment oblige the State and the citizen, respectively, to protect and improve the natural environment and to safeguard the forest and wildlife of the country. The statutory as well as the constitutional message is therefore loud and clear and it is this message which we must constantly*

keep in focus while dealing with issues and matters concerning the environment and the forest area as well as wildlife within those forests. This objective must guide us in interpreting the laws dealing with these matters and our interpretation must, unless the expression or the context conveys otherwise, subserve and advance the aforementioned constitutional objectives."

3.2.2 Article 48A and 51A to be Considered in Light of Article 21 of the. Constitution of India, 1950: This Hon'ble Court in M.C. Mehta v. Kamal Nath, (2000) 6 SCC 213 held that in order to protect ―life‖, in order to protect ―environment and in order to protect ―air, water and soil from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and persons alike, under Article 21 of the Constitution.

3.2.3 The Approach of the Court in interpreting the Laws relating to Forests and the Environment for sustainable development and Inter-generational activities: While interpreting the any laws relating or impacting to the forests, directly or indirectly, the Hon'ble Courts must consider the following considerations:

i. Under Clause (a) Article 48A forming a part of Chapter IV containing the Directive Principles of State Policy, it is the obligation of the State to protect and improve the environment and to safeguard the forests;

ii. Under Clause (g) of Article 51A of the Constitution, it is a fundamental duty of every citizen to protect and preserve the natural environment, including forests, rivers, lakes and wildlife etc.;

iii. Article 21 of the Constitution confers a fundamental right on the individuals to live in a pollution-free environment. Forests are, in a sense, lungs which generate oxygen for the survival of human beings. The forests play a very important role in our ecosystem to prevent pollution. The presence of forests is necessary for enabling the citizens to enjoy their right to live in a pollution-free environment;

iv. It is well settled that the Public Trust Doctrine is a part of our jurisprudence. Under the said doctrine, the State is a trustee of natural resources, such as sea shores, running waters, forests etc. The public at large is the beneficiary of these natural resources. The State being a trustee of natural resources is under a legal duty to protect the natural resources. The public trust doctrine

is a tool for exerting long-established public rights over short-term public rights and private gains;

v. Precautionary principle has been accepted as a part of the law of the land. A conjoint reading of Articles 21, 48A and 51-A(g) of the Constitution of India will show that the State is under a mandate to protect and improve the environment and safeguard the forests. The precautionary principle requires the Government to anticipate, prevent and remedy or eradicate the causes of environmental degradation including to act sternly against the violators;

3.2.4 The diverse kind of works of UP Forest Department described later in this draft are according to Government of India's International Obligations like-

1. **26th Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCC) COP 26 Glasgow, 2021.**

2. SDG Goals declared in UN Sustainable Development Summit, New York on September 25, 2015.,

3. **The Ramsar Convention on Wetlands, 1971– An Intergovernmental treaty.**
4. **Convention on Biological Diversity (CBD) 1992.**
5. **Kyoto Protocol, 1997 COP 3**
6. **21th Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCC) COP 15, Paris, 2015**

3.2.5 Forest Constitutes A National Asset:

a. Amarnath Shrine, In re, (2013) 3 SCC 247

Where it is the **bounden duty of the State to protect** the above rights of the citizen **in discharge of its constitutional obligation** in the larger public interest, there the law also casts a duty upon the State to ensure due protection to the forests and environment of the country.

In other words, the onerous duty lies upon the State to ensure protection of environment and forests on the one hand as well as to undertake necessary

3.2.6 Transition From Human Rights To The Environment To The Rights Of Nature:

T.N. Godavarman Thirumulpad v. Union of India, (2012) 3 SCC 277

"**17.** Environmental justice could be achieved only if we drift away from the principle of anthropocentric to

ecocentric. Many of our principles like sustainable development, polluter-pays principle, intergenerational equity have their roots in anthropocentric principles.Anthropocentrism is always human interest focussed. **Ecocentrism** is *nature-centred where humans are part of nature and non-humans have intrinsic value."*

3.2.7 Sustainable Development: -

(a)- **T.N. Godavarman Thirumulpad v. Union of India, (2006) 1 SCC 87**

Forest sustainability is an integral part of forest management and policy that also has a unique dominating feature and calls for forest owners and society to make a long-term (50 years or longer) commitment to manage forests for future generations. Parks and natural reserve creations.

(b) That in order to protect the environments and ultimately all living things on this earth, United Nations and many International Organizations have taken multifaceted efforts to protect the environment and earth for future generations. Sustainable Development Goals (SDGs) are the UN's blueprint for a more sustainable future for all. Their adoption put environmental

degradation, sustainability, climate change, and water security under the international spotlight.

In 2015, all member states of the United Nations adopted the 2030 Agenda for Sustainable Development. This agenda is comprised of 17 SDGs described as follows :-

SDG 1: No poverty
SDG 2: Zero hunger
SDG 3: Good health and well-being
SDG 4: Quality education
SDG 5: Gender equality
SDG 6: Clean water and sanitation
SDG 7: Affordable and clean energy
SDG 8: Decent work and economic growth
SDG 9: Industry, innovation, and infrastructure
SDG 10: Reduced inequalities
SDG 11: Sustainable cities and communities
SDG 12: Responsible consumption and production
SDG 13: Climate action
SDG 14: Life below water
SDG 15: Life on land
SDG 16: Peace, justice, and strong institutions
SDG 17: Partnerships for the goal

The 17 SDGs are integrated—they recognize that action in one area will affect outcomes in others, and that all development must balance social, economic and environmental sustainability.

Countries have committed to prioritize progress for those who're furthest behind. The creativity, knowhow, technology and financial resources from the governments, Civil Society organizations and all the sections of society is necessary to achieve the SDGs in every context. The SDGs are designed to end poverty, hunger, AIDS, and discrimination against women and girls, climate action, conserving and protecting the life on land etc.

(c) That forests are considered as a sacred asset in India and have guided the way of living throughout its history. Indian forests not only accommodate the myriad species but also act as a survival support system to the communities that depended on them. The 2030 Agenda for Sustainable Development proposed by the United Nations (UN) has gained momentum and becomes an integral part of the recent efforts of Indian governance. **The potential relationship between Indian forestry system (biodiversity-enriched assets, ecosystem services, constitutional mechanisms, and**

governances) and Sustainable Development Goals (SDGs) have been examined by Giribabu Dandabathula, Sudhakar Reddy Chintala, Sonali Ghosh, Padmapriya Balakrishnan, Chandra Shekhar Jha (2021) in a research paper published in ScienceDirect (an online subscription-access scientific literature databases owned by Elseivier publication, Amsterdam, The Netherlands). The researchers have gone through theoretical underpinnings from literature that selected from database like Google Scholar, Indian forest survey reports, and information retrieved from Indian government websites. This review presents comprehensive information about Indian forestry, biodiversity-rich assets, and sustainable forest management practices. **The results show that Indian forestry as a whole is an integral part of the food-energy-water cycle and contributes to all dimensions of sustainable development, i.e., economic sustainability, social sustainability, and environmental sustainability.** (Regional Sustainability 2 (2021) 308-323)

This description tells that besides partly contributing to the economy and life support systems to many dependent species, forests also act as boosters in the areas of food security and health. Targets related to the climate action, peace, and partnership goals are well in place through various forestry interventions and environmental commitments by the Government of India. The Government of India has committed that India will be a Carbon Neutral country by 2070 and will reduce its carbon emissions by 70% till 2030.

Thus, the Sustainable Development Goals work towards a world of peace and prosperity, eradicating major issues such as poverty and hunger, all while protecting the planet. In the midst of the climate crisis, this has never been more important. The environment underpins each of the SDG‘s – they seek to improve living conditions for all, without increasing the use of natural resources. The SDGs work to protect the planet‘s resilience for our future generations.

3.3 UP Forest And Wildlife Department : The current scenario of the diversified nature of work –

	Forest is not an Industry: Summary table of works			
	Activities	**Work details**	**Mandate (Power/Duty derived from)**	**Relevant para of Draft**
	A	**B**	**C**	
	Activities of Forest Department			
	Sovereign Function			
1	Protection	Enforcement work related to notified forest	**1- Indian Forest Act, 1927** **2- Wildlife (Protection) Act, 1972** **3- Van (Sanrakshan avam Samvardhan) Adhiniyam, 1980** **4- Biological Diversity Act, 2002** **5- Uttar Pradesh Tree Protection Act, 1976** **6- Uttar Pradesh Forest Policy, 2017** **7- UP Transit of Timber and Other Forest Produce Rules, 1978** **8- UP Establishment and Regulation of Sawmills Rules, 1978** **9- SDG Goals (2030 Agenda) declared in UN Sustainable Development Summit, New York on September 25, 2015.** **10- Wetland Rules, 2017**	3.3.12 3.3.13 3.3.14 3.3.24 3.3.41 3.3.42 3.3.43 3.3.44 3.3.2 3.3.10 3.3.14 3.3.15
		Enforcement work related to wildlife		
		Enforcement work related to Trees outside Forest		
		Enforcement work related to Biodiversity protection and Conservation		
		Combating Illegal trade and other activities related to forest and Wild Life protection		
		Functions in the Protected Areas		
		Encroachment removal		
	Public order maintenance	Man-animal conflict issue management		

	Social and Welfare Activities			
2	Conservation	Conservation of Bio-diversity (including Heritage Trees, National Animal Tiger, National Aquatic Animal Dolphin, State Bird Saras Crane, Elephant, National Bird Peacock etc. and other endangered species)	**1- Article 21 (Right to Life)** **2- Article 48 A Protection and improvement of Environment and safeguarding of Forests and Wildlife** **3- Convention on Biological Diversity (CBD) 1992 – Obligations of India** **4- National Forest Policy, 1988** **5- National Agroforestry Policy, 2014** **6- Uttar Pradesh Forest Policy, 2017** **7- Wildlife Protection Act, 1972** **8- Van (Sanrakshan avam Samvardhan) Adhiniyam, 1980** **9- Biological Diversity Act, 2002** **10- Working Plans** **11- Orders of Hon'ble Supreme Court in T.N Godavarman v/s Union of India etc.** **12- (Convention on International Trade in Endangered Species of Wild Flora and Fauna).** **13- Vision Document SDG Goal 15 (Life on Land)** **14- SDG Goals declared in UN Sustainable Development Summit, New York on September 25, 2015.** **15- The Ramsar Convention on Wetlands, 1971– An intergovernmental treaty** **16- Wetlands (Convention & Management Rules,2017)**	3.3.3 3.3.2 3.3.4 3.3.10 3.3.11 3.3.24 3.3.23 3.3.10 3.3.14 3.3.15
		Silvicultural activities (including pruning, thinning, lopping, removal of branches, small saplings or trees, climber cutting etc.)		
		Soil Moisture Conservation		
		Assisted Natural Regeneration		
		Creation and management of biodiversity park and endangered species		
		Protection of Sacred Grooves		
		Wetland Conservation		

3	Wildlife Management	Wild life Management	**1- Wildlife (Protection) Act, 1972** **2- Management Plans of Protected Areas** **3- Uttar Pradesh Forest Policy, 2017** **4- Orders of Hon'ble Supreme Court in T.N Godavarman v/s Union of India etc.** **5- Recognition of Zoos Rules 2009** **6- NTCA guidelines** **7- SDG Goals declared in UN Sustainable Development Summit, New York on September 25, 2015.** **8- The Ramsar Convention on Wetlands, 1971– An Intergovernmental treaty** **9- NWAP (National Wildlife Action Plan)**	
		Management of Tiger/Elephant Reserves, National Parks, Sanctuaries		3.3.10 3.3.11
		Establishment and management of zoos, safaris, rescue/breeding centres (for specific species like vultures, leopard etc) etc		
		Grass Land Management		3.3.17
		Creating wild life Corridors		3.3.18
		Construction of water Holes		3.3.19
		Wetland Conservation		3.3.21 3.3.23
		Endangered species protection		3.3.10 3.3.14 3.3.15
4	Social Forestry	Nursery Work (raising of saplings)	**1- National Forest Policy, 1988** **2- Uttar Pradesh Forest Policy, 2017** **3- SDG Goals declared in UN Sustainable Development Summit, New York on September 25, 2015.** **4- JFM Rules 2002** **5- Nagar Van Guidelines of MoEFCC.** **6- National Agroforestry Policy, 2014**	3.3.22 3.3.38 3.3.39
		Plantation (Inside and Outside Forest)		
		Urban Forestry		3.3.23
		Supporting livelihoods		3.3.12
		Joint Forest Management		3.3.6
		Agroforestry		3.3.10 3.3.11
		Carbon Financing		3.3.5.1

5	International Commitments	Climate change Mitigation through forestry work Conservation of Ramsar Sites and other Wetlands Conservation of Biodiversity	**1- 26th Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCC) COP 26 Glasgow, 2021** **2- Wetland Rules, 2017** **3- NDC Goals** **4- SDG Goals declared in UN Sustainable Development Summit, New York on September 25, 2015.** **5- The Ramsar Convention on Wetlands, 1971– An Intergovernmental treaty** **6- Convention on Biological Diversity (CBD) 1992** **7- Kyoto Protocol, 1997 COP 3** **8- 21th Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCC) COP 15 Paris, 2015**	3.3.23
6	Social Welfare and other activities	Forest right to local people Non timber forest produce Awareness drives Relocation of human communities outside protected areas Training and Capacity building Forest survey and mapping Tribal welfare and relocation/rehabilitation	**1. The Panchayats (Extension to the Scheduled Areas) Act, 1996** **2- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006** **3- National Forest Policy, 1988** **4- Uttar Pradesh Forest Policy, 2017** **5- SDG Goals declared in UN Sustainable Development Summit, New York on September 25, 2015.** **6- JFM Rules 2002**	3.3.39 3.3.10 3.3.11 3.3.28 3.3.27 3.3.22 3.3.24 3.3.23 3.3.30 3.3.7
7	Regulatory works	Regulation of felling of trees outside forest	**1- National Forest Policy, 1988**	3.3.22

		Transit of timber and other forest produce	**2- Uttar Pradesh Forest Policy, 2017** **3- UP Transit of Timber and Other Forest Produce Rules, 1978** **3 Directions of Honourable Supreme Court** **4 Uttar Pradesh Tree Protection Act, 1976**	
		Regulation of Wood based industries		3.3.24
		Activities inside Eco-sensitive zones		3.3.25
		Wetland Management		3.3.26
		Transit of Wildlife		
7	Ecological services	Intangible services like clean air, water, prevention of soil erosion, regulation of micro climate, aesthetic beauty etc.	**Article 48 A Protection and improvement of Environment and safeguarding of Forests and Wildlife**	3.3.10 3.3.11 3.3.12 3.3.13 3.3.14 3.3.15 3.3.30 3.3.1 3.3.2 3.3.3 3.3.4
Activities of Forest Corporation (Declared as industry in Charanjeet Singh Case)				
		Salvage removal as per provisions in approved working plan (provided by Forest department)	**1- UP Forest Corporation Act, 1974** **2- UP Eco-Tourism Policy, 2014** **3- UP Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1972**	3.3.9
		Royalty payment to Forest Department		
		Open Auction		
		To aid silvicultural operation and afforestation works of the Forest Department		
		Ecotourism		
		Tendu Patta collection (Completely towards welfare of local communities, loss making activity)		

3.3.1 That the UP Forest and wildlife department plays a major role in achievement of many of SDGs by means of its diversified activities illustrated in this submission The UP Forest department contributes directly or indirectly in achievement of many SDGs like No poverty (SDG-1), Zero hunger (SDG-2), Good health and wellbeing (SDG-3), Gender equality (SDG-5),Clean water and sanitation (SDG 6), Affordable and clean energy (SDG 7), Reduced inequalities (SDG 10) Sustainable cities and communities (SDG 11) Climate action (SDG-13), Life on land (SDG-15), Partnerships for the goal (SDG 17).

3.3.2 SDG 15 (Life on land) is the primary goal dedicated to forests aiming to protect, restore and promote sustainable management of different types of forest.

The primary function of Forest and Wildlife Department is protection and conservation of forests and wildlife, which fulfils the objectives of SDG goal 15. All other SDG goals are closely related to SDG 15 (Life on Land).

Therefore, the works of Forest and wildlife department do not align with the goals of an industry (maximise raw material extraction and economic efficiency) but primarily focuses on

conservation, biodiversity and sustainable management.

3.3.3 Biodiversity and ecosystem conservation is one of the most important functions of the Forest and wildlife department. It is essential for not only for human wants or wishes but far beyond that it is very essential for the existence of life on the earth.

Biodiversity covers all ecosystems, species, and genetic resources. **The Convention on Biological Diversity 1992 is a legally Binding international treaty aimed at conserving biological diversity, ensuring sustainable use of its components, and ensuring fair sharing of benefits from genetic resources. With 196 parties, it operates under the UNEP to address biodiversity threats like habitat loss and climate change.** It has for the **first time linked biodiversity conservation to the development process, fair and equitable sharing of benefits from sustainable use of genetic resources to the eventual goal of economic development**. **Uttar Pradesh,** on account of its wide climatic and geographical landscape, has over centuries **nurtured and preserved a rich biodiversity pool.** The recorded floral diversity of Uttar Pradesh includes 1,017 genera and 2,932 species, and faunal diversity of 2,387 species and 1,241 genera under 281 families.

3.3.4 The Honourable Supreme Court of India has consistently held that forests are vital for maintaining ecological balance and biodiversity, leading to several landmark judgments that restrict the diversion of forest land for non-forestry purposes and mandate the restoration of ecosystems.

Key judgments and orders highlighting this stance include:

T.N. Godavarman Thirumulpad v. Union of India (1996 & 2024 Updates):

A. 1996: The Supreme Court expanded the definition of "forest" to include any area recorded as forest in government records, irrespective of ownership, and those matching the "dictionary meaning" of a forest. **T.N. Godavarman Thirumulpad v. Union of India (1997) 2 SCC 267)**

B. February 2025: The Court directed that no steps leading to a reduction in "forest land" should be taken without providing compensatory land for afforestation. **T.N. Godavarman Thirumulpad v. Union of India, IN RE: Delhi Ridge (2025 SCC OnLine SC 2386)**

C. Protection of Sacred Groves (Orans) - December 2024: The Court recognized "Orans" (traditional sacred groves in Rajasthan) as "deemed forests" and crucial

for local biodiversity, ordering their mapping and protection as community reserves. **T.N. Godavarman Thirumulpad v. Union of India, In Re: Aman Singh (2024 SCC OnLine SC 3778).**

D. Saranda Forest Protection: The Supreme Court ordered the Jharkhand government to declare 31,468.25 hectares of the Saranda forest area as a wildlife sanctuary to protect endangered wildlife and biodiversity, overriding proposals for smaller boundaries. **T.N. Godavarman Thirumulpad v. Union of India, RE: Saranda Wildlife Sanctury (2025 SCC OnLine SC 2444)**

E. Mining Prohibitions : The Supreme Court ruled that mining is prohibited within a 1-kilometre buffer zone around national parks and wildlife sanctuaries, citing the hazard to rich biodiversity. **T.N. Godavarman Thirumulpad v. Union of India IN RE: ISSUES RELATING TO DEFINITION OF ARAVALLI HILLS AND RANGES (2026) 2 SCC 299.**

F. Restoration of Forest Land - Karnataka Case (Dec 2025): The Supreme Court upheld that forest lands cannot be used for non-forestry purposes (e.g., agriculture),without prior approval from the central government under the Forest (Conservation) Act, 1980, specifically ordering the state to reclaim 134 acres of forest land and restore it by planting indigenous

species. **State Of Karnataka & Ors. Versus Gandhi Jeevan Collective Farming Co-Operative Society Limited (2025 SCC OnLine SC 2862)**

G. **Eco-Sensitive Zones around Corbett:** The Court ordered the establishment of eco-sensitive zones around all Tiger Reserves and banned the setting up of zoos/safaris in core, critical tiger habitats. T.N. Godavarman Thirumulpad v. Union of India, IN RE: Corbett Tiger Reserve **(2025 SCC OnLine SC 2463)**

3.3.5 The average expenditure for the plantations from 2023-24 to 2026-27 are as follows: -

Nature of Work				
Description	**F.Y. 2023-24** (October 23 to March 24)	**F.Y. 2024-25** (April 24 to March 25)	**F.Y. 2025-26** (April 25 to March 26)	**F.Y. 2026-27** (April 26 to Sept. 27)
Phases /Activities	**First Phase - Advance soil work** (pits digging, boundary, safety trench, plants raising in nursery etc.)	**Second Phase - Plantation** (ditch filling, carrying of plantation from nursery to plantations site, planting, weeding, hoeing, irrigation, watch and guard etc.)	**Third Phase - First Maintenance** (beading up against the dead plants, weeding, hoeing, irrigation, watch and guard etc.)	**Fourth Phase - Second Maintenance** (weeding, hoeing, irrigation, watch and Guard etc.)

Expenditure in **1 Hec.**	Rs.43300/-	Rs.40500/-	Rs.23800/-	Rs.8700/-
Labour component in the above expenditure and man days created	Rs.40700/- (177 man a days)	Rs.36600/- (159-man a days)	Rs.21600/- (94-man a days)	Rs.7700/- (33 a man days)

3.3.5.1 Agriculturalist/villagers of nearby villages are engaged for the aforesaid work,

Benefit: -While doing their agricultural works in their farms and land they can also do the forestry work of the department, on the actual demand basis, as and whenever required for either weeks or months and can also earn a minimum wage Rs 237 Notified for agricultural labourers and can live happily with their family.

3.3.6 **Free distribution of saplings of various plant species:-** Uttar Pradesh Forest Department has been undertaking mega plantation drives for the last 07 years in which free distribution of saplings were done. Saplings planted on a large scale will enhance green cover which will undoubtedly sequester carbon and provide oxygen, food, fruits, fodder, timber etc. such plantation drives will enhance tree cover that will support good health, sufficient water availability, sustainable cities, minimize climate change and will

indirectly help in poverty alleviation, reducing gender inequality, aiding nutrition in the food of people etc. Works of this department also support other livelihood means of people like agriculture, animal husbandry etc. The department works in tune with the international obligations and commitments of the Government of India under different treaties, conferences etc.

Year	Plantation in Crore	Free Distribution of Sapling by forest department and plantation done in Crore	Total- In Crore
2019-20	6.62	15.98	22.60
2020-21	10.17	15.71	25.88
2021-22	11.06	19.51	30.57
2022-23	12.72	22.77	35.49
2023-24	13.23	22.93	36.19
2024-25	12.93	23.88	36.81
2025-26	12.74	24.47	37.21

3.3.7 NON-PROFIT

That the analysis given below exhibits that the UP Forest department works in larger interest of public and environment irrespective of profit orientation like an industry. The revenue and expenditure incurred by the UP Forest Department since 2000-01 onward are as follows: -

Financial Year	Total Revenue (Rs. in crore)	Total Expenditure (Rs. in crore)	Difference in Revenue and Expenditure (Rs. in crore)
1	**2**	**3**	**4**
2001-02	71.84	175.94	-104.10
2002-03	85.74	161.21	-75.47
2003-04	66.00	164.02	-98.03
2004-05	107.41	188.35	-80.94
2005-06	161.98	271.40	-109.42
2006-07	205.40	338.77	-133.37
2007-08	294.68	410.76	-116.08
2008-09	264.85	512.59	-247.74
2009-10	272.91	503.57	-230.66
2010-11	280.33	467.27	-186.94
2011-12	284.97	489.65	-204.68
2012-13	331.31	591.40	-260.09
2013-14	355.09	723.40	-368.31
2014-15	412.92	795.51	-382.59
2015-16	629.40	860.63	-231.23
2016-17	259.26	1249.84	-990.58
2017-18	330.47	832.01	-501.54
2018-19	353.00	907.85	-554.85
2019-20	332.01	1336.49	-1004.49
2020-21	302.10	1090.02	-787.92
2021-22	317.95	1131.61	-813.66
2022-23	334.10	1607.87	-1273.77
2023-24	350.94	1596.37	-1245.43
2024-25	391.57	1860.36	-1468.79
Total	**6796.23**	**18266.89**	**-11470.7**

The Forest and Wildlife department of Uttar Pradesh is currently operating at a huge deficit budget due to the fact that it has to ensure various national and international commitments and regulatory requirements pertaining to the ecological security. This state of affair substantiates our stand of supporting social and environmental services.

The UP Forest Department is focused on conservation of forestry and it does not conduct production forestry. The department does activities like salvage removal, canopy opening, Assisted Natural regeneration (ANR) etc. in territorial forests to maintain the health and regeneration of these forests. The department does not charge the cost of wood production. Rather it takes royalty for the woods procured by the UP Forest Corporation. This royalty is ploughed back in government exchequer and routed through budgetary provisions of UP government for activities like plantation and nursery management etc. by the department.

3.3.8- That this is a matter of debate that the government departments, which are running in losses, should be handed over to private hands and they will become profitable because of the Government's employees, who neither work to their full capacity nor with full dedication, which results in government departments incurring losses. This argument is not an irrefutable truth nor does this argument apply to every government department. Just as a government keeps the

administrative departments under its control, similarly it wants to keep some other departments related to the protection of life under its control at all costs. After understanding well the work done by the State Forest Department and its importance, no one would want that it should be declared an industry and the efforts which this department is making to sustain life on earth should be stopped, because it would be completely meaningless to expect from the industry, whose other name is business, that they will do any business without profit and where profit is the main objective, it is useless to expect welfare.

3.3.9 -That the UP-Forest corporation is a separate entity created by UP Forest Act, 1974. Its mandate is scientific exploitation of forest resources in which efficient removal, disposal and marketing of timber and non-timber forest produce is done. Its functioning is not within the purview of UP forest and wildlife department.

3.3.10 - That India has diverse fauna due to its diverse landscapes. Every organism has evolved according to the needs required during these times. About one-fourth of the land in India is under forest cover and it aims to achieve the long-term goal of having one-third of the total land area as forest cover. Forest is not only home to animals, birds, reptiles, insects and forest dwellers, but it is also an essential factor in social, cultural, economic and industrial development. It is very essential to maintain ecological balance. These forests are also important areas for wildlife which is essential for their conservation and entry of any human for any activity is

prohibited. It has many benefits for different users and can create conflicts if not managed. How forests are maintained and for what purpose, how choices are made regarding their use, who participates in them, and what steps are taken to enforce forest laws and policies at the local level, all these there are aspects of administration. The State Forest Department is under the direct supervision of the government.

3.3.11 -That the UP Forest and wildlife department also contributes in **Mission LiFE campaign**, which stands for "LiFE Style For Environment." Mission LiFE is a global initiative driven by India's commitment to combat climate change and promote sustainable living in alignment with the United Nations' Sustainable Development Goals (SDGs). This groundbreaking concept was introduced by India during the **26th United Nations Climate Change Conference of the Parties (COP26) held in Glasgow in 2021**.The objective of Mission LiFE is to promote and encourage a sustainable and environmentally conscious way of living. It aims to create a mass movement towards adopting lifestyles that prioritize conservation, moderation, and the protection of the environment. Mission LiFE represents the next logical step in India's journey towards environmental sustainability. The proactive approach of UP Forest department in Mission LiFE demonstrates department's dedication to propagate a healthy and sustainable way of living based on conservation and moderation. By prioritizing the environment in its main goal, the department showcases its leadership in addressing climate change and promoting sustainable development.

3.3.12 -That the different schemes and activities conducted by the UP Forest Department are as follows :-

(a) Scheme sponsored by the Govt. of India :-

(i) Project Tiger and Elephant (PT&PE)

(ii) Integrated Development of Wildlife Habitats

(iii) National Plan for Conservation of Aquatic Eco-system.

(iv) National Bamboo Mission Scheme

(v) Green India Mission Scheme

(vi) Forest Fire Prevention and Management Scheme

(b) Scheme financed by the Govt. of UP :-

(i) Nurseries management scheme

(ii) Eco-system and Infrastructure Development of Wetlands

(iii) Management of Wildlife outside protected areas

(iv) Compensatory Afforestation on behalf of Forest Land Diversion for Developmental Projects

(v) Forest related research and publicity

(vi) Development of Eco-tourism\

(vii) Organization of Bird Festival

(viii) Plantation for Reclamation of Mines in Vidhya and Bundelkhand areas.

(ix) Long term Conservation of Hippopotamus and others very important /endangered Wildlife and their habitats

(x) Conservation of Heritage Trees

(xi) Social Forestry in Urban Areas

(xii) Special Component Sub-Plan

(xiii) Social Forestry

For the efficient execution of these schemes on the ground, the labourers are engaged as plantation watchers, nursery workers, wild life watchers etc on daily wages. UP Forest Therefore, the above said diversified activities of the department aimed at larger interest and welfare of human beings and all living organisms as well as conservation of nature will get hampered and jeopardized, if this comes under the purview of definition of Industry.

3.3.13 -The UP Forest and wildlife Department is like other departments of the State Government and to follow both the working procedures of a Government department and an industry will be impractical. The current programmes and schemes of this Department are aimed at public welfare and social good along with conservation and protection of forests, environment, wildlife, wetlands (including 11 Ramsar Sitesin UP), rivers etc., whereas the Acts related to industries focuses at welfare of the workers and employees.

3.3.14 –UP Forest and Wildlife Department, apart from protecting and conserving forest ecosystem, also protects and conserve other ecosystems like grassland ecosystem, aquatic ecosystem etc. Wetlands, an important aquatic ecosystem, provide economic, environmental and aesthetic benefits, apart from providing natural habitats for biodiversity conservation. These wetlands act as kidneys of the earth because they filter, purify and store water, removing pollutants like heavy metals and excess nutrients through sedimentation and absorption by

aquatic plants. Despite being

a land locked state, Uttar Pradesh is blessed with vast and varied, natural and created, open and closed inland aquatic resources. According to the Wetland Atlas Uttar Pradesh 2010, the state has 133,434 wetland bodies covering 5.16 per cent of its geographical area. The terai and eastern zones of the state are known for extensive floodplain wetlands and underground water resources, apart from abundance of rivers, canals, reservoirs, lakes, ponds and riverine wetlands. However, these ecosystems are threatened by over extraction, pollution caused by domestic, industrial effluent agricultural run-offs, encroachment on river and lake beds and siltation. In order to stem biodiversity loss, sustain urbanisation and demands posed by the state's growing population, inland water bodies require urgent and comprehensive management strategies.

3.3.15 A Ramsar site is a wetland site designated to be of international importance under the **Ramsar Convention**, also known as **"The Convention on Wetlands**", **an international environmental treaty signed on 2 February**

1971 in Ramsar, Iran, under the auspices of UNESCO.). As per the convention signatory countries can declare specific wetland as Ramsar sites, if they meet one or more of 9 criterias declared in Ramsar convention.

There are **11 Ramsar sites in UP** viz. Bakhira Sanctuary, Nawabganj Bird Sanctuary, Saman Bird Sanctuary, Sandi Bird Sanctuary, Sur Sarovar, Haiderpur Wetland, Upper Ganga, Sarsai Nawar Jheel, Samaspur Bird Sanctuary and Parvati

Arga Bird Sanctuary, Patna Bird Sanctuary. These are being maintained by the UP-Forest department.

3.3.16 That under Namami Gange Project, the plantations have done by the UP Forest Department in river basin for the conservation of rivers and soil. The details of plantations done within 10 kms. of both the sides of river Ganga in 27 districts and within 5 kms. on both the banks of Gomti river in 10 districts of Uttar Pradesh from the year 2016-17 to 2023-24, are as follows :-

Sl. No.	**Year**	**Area (in Ha.)**	**Plantations**
1.	2016-17	33.44	9265
2.	2017-18	54.56	22074
3.	2018-19	644.25	508350
4.	2019-20	3871.81	1944640
5.	2020-21	2802.31	2074069
6.	2021-22	515.00	211575
7.	2022-23	485.20	72780
8.	2023-24	382.06	57309
Total		**8788.63**	**4900062**

3.3.17 - That the UP Forest department manages 3 tiger reserves, 2 elephant reserves, 01 National Park, 10 wildlife sanctuaries, 14 birds sanctuaries (along with their buffer zones) and 1 conservation reserve. (nearly 55.42% of the area under forests are wild life protected areas in UP). These wild life protected areas are managed completely by the UP Forest Department for the purpose of wildlife conservation and protection and not for the production of any goods. According to the order passed by the Hon'ble Supreme Court in Writ Petition (Civil) 202 of 1995 (*T.N. Godavarman* Thirumulkpad. Vs. Union of India & ors.) dated 14.02.2000, **felling of trees in these areas is strictly prohibited and done merely for maintenance of habitats of the wildlife and conservation of biodiversity**. **As a testimony of the efficient management of forest, the population of tigers (the keystone species of forests) has been increased in Uttar Pradesh during the last years**. The details of tigers in

UP are as follows :-

Sl. No.	**Year**	**No. of Tigers in UP**
1.	2014	117
2	2018	173
3	2022	205

3.3.18 - That UP Forest department is establishing 4 rescue centers in Chitrakoot, Meerut, Maharajganj and Pilibhit Tiger Reserve. Regarding National Aquatic Animal ―Gangetic dolphin‖, Uttar Pradesh has the highest population of Gangetic Dolphins in India. There are more than 20,000 saras crane population in UP. A Vulture conservation center has been established in Gorakhpur. These centers are regulated by the Central Zoo Authority (MoEFCC, Govt. of India). There are many Zoological parks in UP for ex situ conservation and awareness generation under Wildlife Protection Act, 1972. The list of Zoological parks in UP is as under :-

(i) Kanpur Zoological Park, Kanpur Nagar, Kanpur.

(ii) Etawah Multiple Safari and Lion Breeding Center, Etawah.

(iii) Shaheed Ashfaq Ullah Khan Smarak Prani Udyan, Gorakhpur.

(iv) Nawab Wazid Ali Shah Prani Udyan, Lucknow.

Forest and wildlife department deals with all the Human Wildlife conflicts in the state with the objective of protection of biodiversity along with prevention of any loss to humanity. These rescue centers and other ex situ conservation measures are examples of efforts in this direction.

3.3.19 - The UP Forest department has contributed in several initiatives taken by the Government of India to combat climate change and protect the environment.

These are as follows- (a)-National Afforestation Programme (NAP), (b)- National Mission for a Green India (GIM) - It aims at protecting; restoring and enhancing India's diminishing forest cover and responding to climate change by a combination of adaptation and mitigation measures, (c) National Action Plan on Climate Change (NAPCC) - National Action Plan for Climate Change (NAPCC), (d)-National Biodiversity Action Plan. The National Environment Policy, 2006, seeks to achieve balance and harmony between development and conservation of natural resources.

3.3.21- That the UP-Forest Department comes under Ministry of Environment, Forests and Climate Change. Its various activities eg. Social Forestry, Wild Life Protection, Soil and

Moisture Conservation activities, Environmental Education and Awareness, Nursery Management, Agro Forestry, Compensatory Afforestation against forest land diversion for development activities comes under the category of constitutional obligations of the State. For the efficient execution of these schemes on the ground, the daily agricultural workers/labourers are engaged as plantation watchers, nursery workers, wild life watchers etc. on daily wages because they are living nearby in villages or vicinity. **Therefore, the above said diversified activities of the UP Forest department aimed at larger interest and welfare of human beings and all living organisms as well as conservation of nature will get hampered and jeopardized, if this comes under the purview of definition of Industry**.

3.3.22- That the **National Forest Policy, 1988** is an Act of the Parliament of India to revise the previously enacted National Forest Policy of 1952. The principal aim of National Forest Policy, 1988 is to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinate to this principal aim. Details are as under :-

(i) Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.

(ii) Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.

(iii) Checking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the "interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs.

(iv) Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts.

(v) Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.

(vi) Meeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal populations.

(vii) Increasing the productivity of forests to meet essential national needs.

(viii) Encouraging efficient utilisation of forest produce and maximising substitution of wood.

(ix) Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimise pressure on existing forests.

(x) The principal aim of Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all lifeforms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.

3.3.23–Vision Document SDG goal 15 (Life on Land)

Uttar Pradesh is committed to protecting, restoring and promoting sustainable use of terrestrial ecosystems in the interest of sustainable growth and inclusive

development. It envisions sustainable use of natural resources like cultivable land, forests and water bodies and also aims at reversing environmental degradation by restoring the degraded ecosystems thus ensuring their availability for future generations. The state is also committed to conserving its rich biodiversity, natural habitats and to prevent the introduction and spread of invasive alien species. For the benefits of conservation efforts to reach all sections of society, the state also envisages strengthening the capacities of the agents of change both at institutional as well as at grass-roots level

The state has been conservative in setting targets for all areas of terrestrial ecosystem conservation and restoration. If more ambitious targets are to be embraced, resources in the form of finances, trained human resource, land availability, effective monitoring mechanisms, etc., will be required. The state thus envisages the following strategies:

Target 15.1 Ensure the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services. In particular, forests, wetlands, mountains and dry lands, in line with obligations under international agreements.

Target 15.2 Promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally.

Target 15.3 Combat desertification, restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land-degradation neutral world.

Target 15.4 Ensure the conservation of mountain ecosystems, including their biodiversity, in order to enhance their capacity to provide benefits that are essential for sustainable development.

Target 15.5 Take urgent and significant action to reduce the degradation of natural habitats, halt the loss of biodiversity and protect and prevent the extinction of threatened species.

Target 15.6 Promote fair and equitable sharing of the benefits arising from the utilization of genetic resources and promote appropriate access to such resources, as internationally agreed.

Target 15.7 Take urgent action to end poaching and trafficking of protected species of flora and fauna and address both demand and supply of illegal wildlife products.

Target 15.8 Introduce measures to prevent the introduction and significantly reduce the impact of invasive alien species on land and water ecosystems and control or eradicate the priority species.

Target 15.9 Integrate ecosystems and biodiversity values into national and local planning, development processes, poverty reduction strategies and accounts.

Target 15.10 Mobilise and significantly increase financial resources from all sources to conserve and sustainably use biodiversity and ecosystems.

This vision documents clearly states the multifaceted and diversified nature of works and duties of forest and wildlife department of Uttar Pradesh.

3.3.24 - Uttar Pradesh Forest Policy 2017

The **Forest Policy of Uttar Pradesh, 2017** marked a paradigm shift in forest governance by integrating

ecological sustainability with socio- economic development. It was formulated in response to the state‘s historically low forest cover, increasing environmental stress, and the need for community participation in forest management. The policy seeks to modernize forest governance while aligning with national forest and climate objectives.

Objectives of the Policy-

- **Enhance Forest & Tree Cover:** Target to raise forest and tree cover to **15% of total geographical area by 2030** through planned afforestation and eco-restoration.
- **Biodiversity Conservation:** Protect native flora and fauna, safeguard critical habitats, and support ecosystem

functions.

- **Climate Mitigation & Water Security:** Augment carbon sequestration, protect watersheds, and improve micro-climatic conditions.
- **Community Participation & Livelihood Support:** Empower local communities through **Joint Forest Management Committees (JFMCs)** and **equitable benefit sharing** from forest produce.

- **Sustainable Livelihoods and Eco-Development:** Regulated access to **non-timber forest produce (NTFP)**, promotion of **eco-tourism**, and creation of **green employment.**

Key Policy Components-

- **Afforestation and Forest Expansion**
  - **Plantation Programmes:** Mega plantation drives involving 27 departments massive public participation and large scale extention activities. Systematic afforestation on **degraded forest lands, village wastelands, and urban fringes**.
  - **Compensatory Afforestation:** Mandatory **compensatory afforestation** for forest land diverted for **development projects**.
  - **Social Forestry:** Promotion of **tree planting on community lands, along roads, canals, railway lines**, and in **urban areas** through agroforestry and urban

forestry initiatives

- **Species Selection:** Emphasis on **native and multi-purpose tree species** suited to local ecology.
- **Terai Region Focus:** Special emphasis on **protecting and expanding Sal and mixed deciduous forests** in the Terai belt along the Himalayan foothills
- **Bundelkhand Restoration:** Targeted programmes for the **drought-prone Bundelkhand region** focusing on water conservation and **drought-resistant species**

- **Biodiversity and Wildlife Protection**

- **Protected Areas:** Strengthening conservation in **protected areas, wildlife corridors, and critical habitats**.

- **Wildlife Corridors:** Major wildlife corridors include the **Dudhwa–Pilibhit–Katarniaghat landscape**, crucial for tigers, elephants, and swamp deer
- **Endangered Species Protection:** Protection of endangered species and ecological hotspots such as **Terai forests and Bundelkhand watersheds**.
- **Sacred Groves:** Protection and conservation of traditional sacred groves that hold **cultural and ecological significance.**
- **Wetland Conservation:** Protection of wetlands and water bodies within forest areas that serve as **critical habitats** for aquatic biodiversity.

- **Participatory Forest Management**

  - **Joint Forest Management Committees:** Expansion of **JFMCs and Eco-Development Committees** with real roles in protection and regeneration.
  - **Non-Timber Forest Products (NTFP) Rights:** Sustainable rights for collection of NTFP like **mahua, tendu, medicinal plants and honey**.
  - **Women's Participation:** Special emphasis on **women's involvement** and equitable **benefit sharing**.
  - **Forest Rights Implementation:** Implementation of the Scheduled Tribes and Other Traditional **Forest Dwellers (Recognition of Forest Rights) Act, 2006.**

- **Forest Protection and Fire Management**

  - **Fire Prevention:** Community-supported **fire prevention strategies**, early warning systems, and rapid response teams.
  - **Rapid Response:** Development of rapid response mechanisms with **trained fire-fighting teams** and necessary equipment.
  - **Encroachment Prevention:** Legal and administrative measures to curb **encroachments, grazing pressure, and illicit timber cutting**.
  - **Grazing Management:** Regulated grazing practices to **prevent forest degradation** while meeting the needs of pastoral communities

- **Eco-Tourism and Green Economy**
  - **Eco-tourism Promotion:** Promotion of **low-impact eco-tourism** to generate revenue for **forest conservation and community income**.
  - **Urban Forestry:** Integration of **urban forestry and green belts** around cities to enhance environmental quality.

3.3.25- That the paper on **—Trees Outside Forest (ToF) Resources in India‖** published by Forest survey of India also emphasizes that ToF are significant natural, renewable resources which make vital contributions to the agro-ecology, socio-economic improvement of the rural areas, environmental amelioration in the urban areas and feed WBIs with raw material and thus generate significant employment. ToF form nearly 38% of the carbon sink in the forest and tree cover of the country. It states that ToF offers the path for achieving the national policy goal of 33% of forest and tree cover in the country. It states that through the expansion of ToF, particularly in agro-forestry and on culturable waste lands, India can substantially increase its carbon sink to achieve its international commitments of National Development Council and LDN by 2030.

3.3.26- That the trees outside forests are merely regulated by the UP-Forest department for the benefit of human beings and maintenance of biodiversity in the area. Except 29 plants species of environmental importance, all other plants can be freely utilized by the owners**.**

3.3.27- That about 948 Heritage trees have been identified in Uttar Pradesh. These are the oldest trees of the state which are taken care of by UP Forest Department. Their propagules have been collected from time to time to maintain **Virasat Vriksh Vatikas** in various districts to spread awareness on the importance of cultural, historical as well as environmental values of these trees.

3.3.28- That various theme-based plantations are parts of plantation drives conducted by the UP Forest department, eg. Nakshatra Vatika, Panchvati, Shri Hari Shankari Vatika, Dhanvantari Vatika, Buddh Vatika, Aushadhi Van etc. During the year 2023, total 112 Shakti Van (plantation conducted by the women), 121 Khadya Van (plantation for providing fruits etc. to the villagers), 41 Baal Van (plantation done by the children), 21 Yuva Van (plantation done by the young students) have been done by the UP Forest department. **By means of these specific plantations, the Forest and wildlife department mobilizes various sections of the**

society inculcate spiritual linkage of people with plantations and spread awareness about the medicinal, economical, aesthetic and other benefits of various plants species.

3.3.29-That as per the India State of Forest Report, 2023 released by the Forest Survey of India, Uttar Pradesh recorded the **second-highest increase** in **forest and tree cover in India,** with an addition of **559.19 sq km** between 2021 and 2023**,** next only to **Chhattisgarh,** taking the **total green cover to 9.96%** of the State 's geographical area. The forest and tree cover of Uttar Pradesh has increased by 3,38,000 acre from 2015 to 2023.

3.3.30- That it is to be noted that **the intangible benefits like** oxygen given by the trees, carbon sequestration, soil amelioration, protection from soil erosion, rejuvenation of rivers and wetlands, reduction in temperature of local atmosphere, providing natural habitats to floral and faunal wealth of India, Conservation and protection of biodiversity etc. are **never controlled or regulated by the Forest and wildlife department.**

These benefits are free for all living organisms (non-exclusion principle). Therefore, the department should not be considered as an industry.

3.3.31-Forest department is led by Indian Forest Service officers, whose recruitment, conditions of service etc. are governed and regulated by various rules and regulations issued by government under Article 309 and 312 of the Constitution of India. The disputes in these services are heard by special tribunals.

3.3.32-There is special tribunal **- Honourable National Green Tribunal** established by **National Green Tribunal Act 2010** of Parliament of India under the instructions of Hon'ble Supreme Court of India. Hon'ble NGT is a **specialized quasi-judicial body** established in India to address environmental disputes related to environmental protection, It does effective and expeditious disposal of cases related to pollution, conservation of forests, natural resources etc. and have powers to impose penalties, issue directions and provide remedies. **The work of Forest and wildlife department is also covered under the purview of Hon'ble NGT, therefore this department should not be considered as Industry.**

3.3.33-- Forest department submits that according to the definition of industry as per Article 2(p) in the Industrial Relations Code 2020, **almost all government department and even the Honourable courts are to be considered as industry.** This will lead to a detrimental impact on the current democratic setup of the country and may jeopardize the smooth functioning of the executive and the judiciary itself.

3.3.34- Industrial Relations Code 2020 **has provisions of trade union etc. but it should not be applied where CCA/CCS rules are applied.** If government department like Forest will be considered as industry, trade unions cannot be barred in the department.

3.3.35-Considering the following provision of section 28 of IR Code 2020-

28. Application of this Chapter.-(1) *The provisions of this Chapter shall apply to every industrial establishment wherein three hundred or more than three hundred workers, are employed, or were employed on any day of the preceding twelve months.*

(2) Notwithstanding anything contained in sub-section (1), the provisions of this Chapter shall not apply to an industrial establishment in so far as the workers employed therein are persons to whom the Fundamental and Supplementary Rules, ***Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave***

Rules, Civil Service Regulations, Civilians in Defence Service (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government, apply.

3.3.36 There are **Central Administrative Tribunal, State Administrative Tribunal**, for services like IAS, IPS and IFS therefore the functions of these officers should not be considered as industry.

3.3.37- In the present connotations, it is humbly submitted that if education, health and judiciary is not being considered as industry, the works of forest department should also not be deemed as industry.

3.3.38 The UP-Forest department grows and supplies these different plants saplings. These plants are providing various benefits to the common people like food, fodder, timber, fuel, medicines, income generation etc. in addition to environmental benefits.

3.3.39 - The forest and wildlife department has provided rights to the forest dwellers under the provisions of the **Scheduled tribes and other traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. This and other functions and duties of the department come under the obligations of the Welfare State .**

An overview of the aforementioned diverse functions of this department clearly exhibits that **these are far beyond the charitable and philanthropic works and therefore the department should not be considered as industry as per the Industrial Relations Code 2020.**

3.3.40 – That any activity and function of the forest and wildlife department is **not included in the calculation of Gross Domestic Product of the country and** therefore the department should not be considered as industry.

3.3.41 Wildlife Trade: This is a major criminal activity in UP, with the state being both a source and transit for illegal trafficking, particularly along the Nepal border.

Major threats involve poaching of Tigers, Leopards and Turtles with significant seizures of endangered species like soft-shell turtles, pangolins, live avians etc. The porous border with Nepal and close proximity to China make UP a key transit point for illegal wildlife items. Apart from prohibited wildlife trade, other forest offences relating to illegal felling of trees, encroachment on forest land, illegal mining etc. are also prevented by UP Forest and Wildlife Department.

Many times it leads to **Law and Order** situation.

3.3.42 Human-Wildlife Conflict: With increasing human population especially in the proximity of forest and wildlife areas and their negative interaction with the nearby forest, the human-wildlife conflict is evolving as a major challenge, acting at a critical intersection of ecological conservation, livelihood security and **Law and Order**.

It is characterized by adverse interaction such as crop raiding, livestock depredation and direct threat to human safety. The prevailing situation frequently triggers social unrest leading to the demands **for** compassion, retaliatory killings of wild animals and sometimes violent confrontation, making it a **Law and Order** concern in forest fringe areas.

3.3.43 That UP Forest Department, in discharge of the aforementioned diversified functions, many of which come under the category of 'Sovereign functions', engages local laborers on daily wages as per requirement of the work like plantation watchers,

nursery workers etc. for the execution of various schemes sponsored by the Government of India or by the Government of Uttar Pradesh. Since these agricultural laborers can‘t go far places leaving behind their families in the villages, they have their own agricultural activities. Therefore, for the planation and other forestation work, routinely agricultural laborers of the same village or nearby villages are hired for work and they are also benefitted by the _Governments' Scheme like _MGNREGA‘ etc.in which local residence proof is required.

3.3.44 That though after the year 1991, in this era of globalization, there have been a lot of improvement in the functioning of the industries, there have been lot of ease in the relations between the employers and the workers, the standard of living of the workers has also improved, the country is moving ahead on the path of development, but it does not mean that industries are the only reason for all the prosperity. Social reasons are also responsible for this to a great extent.By counting the benefits of industries in the development of the country and society, it cannot be argued that the State Forest

Department should also be declared an industry. Many forces have been trying for a long time to declare the State Forest Department as an industry, which can go to any extent for profit. Nature has given us rare/valuable species of trees and plants and these **industrialists** want to grab them and sell them at arbitrary prices to earn profit. This fact is not hidden from anyone that they first provide the facility to the public for free and when the public gets accustomed to that facility, they charge arbitrary prices for it. The adverse effects of the health and education departments related to humanity, which were handed over to private hands, are now coming to light. Extortionate prices of medicines and arbitrary fees are being charged by the schools, the government is forced to open 'Jan Aushadhi Kendras' but now all the efforts are proving inadequate because these industrialists/ education mafias have established deep roots in the society.

3.3.45 Existential Values: Functions of Forest and Wildlife Department represent fundamental existential values, meaning thereby that they are indispensable to the survival, health and well-being of not only human

beings *(Homo-sapiens)* but also well being of other life forms on earth. They are life support system that regulate air composition and quality, climate and water forming a complex ecological web upon which human beings and other life forms depend. Forest acts as the lungs of the earth through the production of vital oxygen and sequestration of extra carbon dioxide. Forest along with wetlands help in water cycle regulation and act as a natural sponges, absorbing rain water and recharging ground water and thereby preventing floods and droughts.

3.3.46 UP Forest Department neither operate in competitive market nor it produces goods for trade in industrial sense contemplated under I.R. Code 2020.

3.3.47 We request Honorable Supreme Court that the core sovereign and constitutional functions must remain outside the ambit of definition of industry.

We also request Honorable Supreme Court to formulate a litmus test to identify which activity should be considered as industry and which activity should not. Such a test needs to be based on logic and reason in the context

of present national scenario, international obligations of Government of India as well as environmental challenges before life on earth like climate change etc.

3.3.48 Adverse impacts, If the Forest and wildlife department, UP treated as 'Industry': -

a. The aforementioned versatile works of Uttar Pradesh forest and wildlife department are of continuous and 24 by 7 nature. The department cannot afford any pause or gap in its duties like prevention of human wildlife Conflict, nursery management, protection and conservation of forests, wetlands and wildlife as illustrated earlier.

b. **Strikes will be frequent**. A strike, according to Section 2(q) of the Industrial Disputes Act, is a cessation of work for any length of time under a common understanding to put pressure on an employer to accept their demands. Such a strike can exist even though it is not part of an industrial dispute. A strike, if happens for any reason, during the time of nursery and plantation work, it will totally disrupt the

mega plantation drives conducted by this Department. The seeds & saplings in the nursery and plants in the plantation sites will get dry and damage if not nurtured and cared at particular intervals. A strike in wildlife protected areas will jeopardize the basic aims of conservation of wildlife and forests in national parks, sanctuaries, zoos as well as prevention and mitigation of man Animal conflicts in this country, etc.

c. Gherao is a tactic used by labor activists and union leaders in India; it is similar to picketing, In this method, a group of workers initiate collective action, aimed at preventing members of the management from leaving the office. A Gherao, during the peak times of nursery, plantation or wildlife activities in protected areas may totally disrupt the mega plantation drives and critical wildlife management practices being conducted by this Department. So, if the forest comes under the purview of definition of industry, the smooth functioning of this department will get hampered because of provisions of labor laws.

Filed by:

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DATED:09.03.2026

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 897 OF 2002

In the matter of:

STATE OF UTTAR PRADESH …PETITIONER

VERSUS

JAI BIR SINGH …RESPONDENT

AND

IN THE MATTER OF:

UNIVERSITY OF MUMBAI …PETITIONER

VERSUS

MUMBAI VIDYAPEETH KAMGAR SANGHATHAN …RESPONDENT

WRITTEN SUBMISSIONS OF MR. SHEKHAR NAPHADE, SENIOR ADVOCATE, ON BEHALF OF UNIVERSITY OF MUMBAI

I. Locus of Mumbai University

1. In the above matter and the connected matters the Hon'ble Chief Justice has constituted a bench of Nine Hon'ble Judges for deciding the question as to what is the true meaning of the word "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (ID Act). This reference to the larger bench is in the context of the judgment of this Hon'ble Court in the case of *Bangalore Water Supply (1978) 2 SCC 213*. The said judgment was delivered by a bench consisting of seven Hon'ble Judges. Hence, the present reference.

2. The University of Mumbai (Mumbai University) is directly and substantially interested in the subject matter of the present reference to the bench of nine Hon'ble Judges. In Civil Appeal No. 5025/2022 and other connected matters, Mumbai University is the appellant. One of the issues raised by the university in the pending civil appeals and other connected matters is that the activity of the university and other educational institutions does fall within the ambit of the definition of "industry" as defined in section 2(j) of the ID Act. Hence university's locus in participating in the above reference.

II. <u>What should be the approach of this Hon'ble Court?</u>

1. It is respectfully submitted that all the issues relating to the interpretation of definition of "industry" as contained in section 2(j) of the ID Act should be open for fresh consideration by this Hon'ble Court without any constraints on account of the propositions enunciated in previous judgments.
2. The judicial pronouncements on the subject are not consistent. The time has now come to judicially settle the issue as to what activity constitutes an industry as defined in section 2(j) of the ID Act. In order to achieve this objective, it is very necessary for this Hon'ble Court to formulate a litmus test to identify as to which activity constitutes industry and which activity does not amount to carrying on an industry. Such a test must be based on logic and reason.
3. It is respectfully submitted that the fault line that pervades all previous judgments is that there is no detailed analysis of the meaning of the words used in the definition of industry

contained in the ID Act. Consequently, there is no logical test for deciding the question as to what is “industry”.

III. Triple Test

1. Bangalore water supply judgment formulated the triple test for the purpose of interpreting the definition of industry. The triple test has three ingredients: where there is (i) Systematic activity, (ii) organized by co-operation between employer and employee, and (iii) for the production and distribution of goods and services. After formulating the test, court carved out exceptions. The sovereign regal functions of the state are outside the scope of the definition. Religious activities do not fall within the ambit of the definition. The courts have erroneously assumed that the triple test is implicit within the wording of the definition. If this is a correct approach, then exceptions to the triple test must also logically flow from the wording of the definition. There is nothing in the wording of the definition which would sustain such an approach. The triple test does not explain the basis for the aforesaid exceptions.

2. The triple test is a judicial invention and is not based on the wording of the definition contained in the statute. The carving out of exceptions is neither based on the text of the statute nor on any principle of logic. It is judicially imported into the statute. The exceptions are not even based on the triple test itself. The following illustrations show how the triple test falters on the altar of logic and reason.

3.1. The administration of justice by the courts, tribunals, and other judicial authorities involves the rendering of service to the litigants. The triple test is satisfied even in respect of the

administration of justice, as it is a systematic activity organized by the cooperation between the employer (government or court) and the employees (the staff working in the court, tribunal, and other judicial authorities) and it results in rendering a service to the litigants.

3.2. The Police force maintains law and order and protects the life and property of citizens. This activity satisfies the triple test, as it is a systematic activity, organized by the cooperation between the employer (government) and the employees (Police personnel) and it results in rendering service to the society and citizens.

4. The tiple test theory carves out exceptions by limiting the ambit of the expression “services”. In other words, the triple test suggests that all kinds of services are not included in the said expression. For example, sovereign functions and religious services are outside the definition of industry. No such limiting factor is to be found in the wording of the definition. If the triple test is to be followed then there is no reason for excluding sovereign functions of the state and religious services from the definition of industry. Thus application of triple test and carving out exceptions thereto leads to logical inconsistency. The triple test suggests that the expression “services” means material services. The triple test does not answer the question as to how educational service is a material service. The triple test treats educational service as a material services as an axiomatic proposition. There is no warrant for such a view. The dividing line between material service and

non- material services involves substantially subjective element, leading to discordant judicial pronouncements.

5. It is respectfully submitted that the triple test propounded in the Bangalore Water Supply case should be rejected as it is not based on the wording of the statute and it has no logical base. The triple test does not give effect to the plain meaning of the words deployed in section 2(j) of the ID Act.

IV. Economic Criteria

1. The question now is how to interpret the definition of industry contained in section 2(j) of the ID Act. The definition reads as follows:

   "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.

2. The definition has two parts. The first part refers to the activity of the employer. The second part of the definition refers to the activities of the employees. The activities of the employees must necessarily relate to the activity of the employer. In other words, the first part of the definition specifies the activities of the employer which constitute an industry and the second part of the definition tells us that the employees work to carry out such activities. The second part of the definition does not extend the scope of the definition. The essence of the definition is in the first part of the definition itself. The second part is not an independent factor. A combined reading of the two parts of the definition leads us to the conclusion that the employer carries on industry wherein the employees work.

3. The words “business”, “trade” and “manufacture” used in the definition of industry carry within their womb economic/ commercial activity. The dictionary meaning of the word “calling” is occupation or trade (see Oxford, Webster, Collins etc.). The word “calling” has an economic content. The world “calling” also has spiritual connotation, but it is obviously not used in that sense. The word “undertaking” is wedged between the words “business” and “trade” on one hand and words “manufacture” and “calling” on the other hand. Therefore, the word “undertaking” takes its colour from the other words, namely, business, trade, manufacture and calling. Even the word “calling” itself takes its colour from the other words. Thus, all the words used in the definition are cognate expressions and have economic roots. The principle of *noscitur a sociis and ejusdem generis* is clearly attracted. Each word used in the definition conveys a sense of organized economic activity. The dominant content of the definition of industry is organized economic activity. This furnishes the litmus test to decide as to what constitutes industry.

4. The aforesaid economic criteria test also furnishes a definite parameter to judge what is material service. A material service means a service which is predominantly rooted in economic activities. If this test is applied to any university or any educational institution, the only possible conclusion is that educational activities are not primarily and predominantly economic activities and, therefore, educational service is not a rendering material service. Educational activities predominantly involves intellectual enlightenment, which is far

removed from the concept of economic activities. Consequently, universities and colleges, schools, and other educational institutions are not engaged in an industry as defined in section 2(j) of the ID Act. Similarly, sovereign functions of the state are not predominantly economic activities, and therefore, these functions do not fall within the definition of industry. By the same logic. purely religious activities are also predominantly not economic activities and therefore they do not satisfy the test of being an industry. A university or a college or a school or an educational institution may have a printing department, transport department or a canteen etc. These are incidental activities and are not the main functions of such educational institutions. Such incidental activities are not of decisive significance. Same logic must also apply to large scale prasad making in a temple. It is purely incidental to predominant religious function of the temple. Hence not an industry.

5. There is a presumption that the legislature is aware of existing laws, when it enacts a new statute. When the ID Act was put on the statute books, the universities and teachers and other staff members were governed and still continue to be governed by the statutory provisions. All aspects of employment, including recruitment, termination of services, salary, allowances, promotion, disciplinary action etc. are governed by statutory provision. It is therefore reasonable to assume that the Parliament did not intend to create a duplicate machinery to deal with the employment of teachers and other staff members working in universities, colleges, schools and other education

institutions, this aspect was not considered in any of the previous judgments. Moreover, the teaching activity, which is the main function of any educational institution, is carried on by the teachers only and having regard to their duties they cannot be considered as workmen within the meaning of section 2(s) of the ID Act. The assistance rendered by the other staff members is incidental and their work is not determinative of the true character of the activities of the educational institution. Moreover, universities preform an important statutory function of conferring degrees and diplomas and other educational qualifications, this is purely a statutory function and partakes of an essential government function and cannot, by any stretch of imagination, be considered an economic activity. Hence, there is no question of a university being an industry within the meaning of section 2(j) of the ID Act.

Date: 28/02/2026

Shashibhushan P Adgoankar
Advocate on Record

IN THE SUPREME COURT OF INDIA Section III-A

CIVIL APPELLATE JURISDICTION

I.A. NO. 237368 /2023

IN

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IN THE MATTER OF:

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WRITTEN SUBMISSION OF DR. VIVEK SHARMA

PAPER BOOK

[Kindly see inside for index]

Advocate on Record for the Applicant **: (DR.) VIVEK SHARMA**

WRITTEN SUBMISSION OF DR. VIVEK SHARMA

1. In this matter, the key issues are :
   i. Whether the definition of 'industry' under Section 2(j) of the Industrial Dispute Act 1947 should be read restrictively?
   ii. Whether the majority judgement in the Banglore Water Supply case was a unanimous judgement?
   iii. Whether a restrictive reading of Industry in Industrial Dispute Act to promote a harmonious relationship between the employer and the employee?
2. The term 'Industry' is defined under Section 2(j) of the Industrial Dispute Act 1947. The definition provided is quite precise and its scope is yet to be determined- whether broad or restrictive. Industry plays an important role in developing economy of the nation. Laws are equally essential for any development in technological field because without protection, without laws, there would be violation of human rights which a democratic country cannot afford.

   This honourable Supreme Court has also asked the legislature to clarify what exactly the definition aim to cover. In 1982, Parliament passed an amendment to the Industrial Dispute Act, which

created several exceptions to the definition. But this amendment was never notified by the government and so the original definition under the Industrial Dispute Act 1947 continues to be the law in force. In 1978, the word ‘industry’ was interpreted widely by a bench of seven judges under the I D Act 1978 in the case of Banglore water supply. It was held that, ‘industry’ has to be read widely in the light of broad definition in the I D Act.

In the light of broad definition, every profession; even universities, charitable organisations and autonomous institutions are included within the ambit of industry. The court ruled that, there must be a minimum number of employees for a business or profession to be considered an industry.

Besides any person who works in an industry under I D Act is entitled to the various benefits and protection under the Act.

In the recent time, various stringent labour standards demands for restrictive reading of the word ‘industry’.

So, while deciding the issue of definition of ‘industry’, along with statutory provisions, the court should also consider it from the angle of workers, from the angle of other stakeholders i.e. employer and from the angle of society as a whole. The definition of ‘industry’ may be limited to the manufacturing sector.

Restrictive reading of industry under I D Act will promote a harmonious relationship between the employer and the employee. It will also be beneficial for the society and development of the economy and nation.

Drawn & Filed BY:

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FILED ON: 28/11/2023

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. NO. 248201 OF 2023
IN
CIVIL APPEAL NO. 897 OF 2002

IN THE MATTER OF:

State of U.P. … Appellants

Versus

Jai Bir Singh … Respondents

AND IN THE MATTER OF:

All India Institute of Medical Sciences, New Delhi … Applicant/Intervenor

WRITTEN SUBMISSIONS ON BEHALF OF AIIMS

1. The present written submissions are being filed on behalf of the Applicant/ All India Institute of Medical Sciences, New Delhi ("AIIMS") which has sought liberty vide IA No. 248201 of 2023 to intervene and assist this Hon'ble Court on the subject matter before this Hon'ble Court in the captioned Appeal i.e., the scope and ambit of the term '*industry'* under Industrial Disputes Act, 1947 ("ID Act"). The Applicant seeks to submit that the definition of "industry" as interpreted in the judgment of *Bangalore Water Supply & Sewarage Board v. A Rajappa* (1978) 2 SCC 213 ("*Bangalore Water Supply")* requires reconsideration and that the same cannot be read to include an institute such as the Applicant within its ambit, for reasons stated *infra.*

2. The term *'Industry'* as defined under Section 2(j) of the ID Act is defined 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. Notably, the Applicant herein has been held to be an "*industry"* as defined under the ID Act by virtue of the judgments in:

   (i) *All India Institute of Medical Sciences vs. Raj Singh* (2017) 12 SCC 803: The said appeal was filed before this Hon'ble Court against an order passed by a Division Bench of the Hon'ble Delhi High Court in *AIIMS vs. Raj Singh,* 2008 SCC OnLine Del 1603, which relying upon the judgment of this Hon'ble Court in *Bangalore Water Supply* (supra), held AIIMS to be an industry. This Hon'ble

Court in *Raj Singh* (supra) upheld the judgement passed by the Hon'ble High Court.

(ii) *AIIMS, New Delhi v Uddal & Ors.*, W.P.(C) 870 of 2003, judgment dated 21.04.2014: The said writ petition was filed before the Hon'ble Delhi High Court by AIIMS, challenging the order passed by the Labour Court holding AIIMS to be an industry, as defined under the Industrial Disputes Act, 1947. The Hon'ble High Court upheld the findings of the Labour Court.

4. Pertinently, the aforementioned judgements have relied on the majority view in *Bangalore Water Supply* (supra) which held that, "*hospital facility, research products and training services are surely services and hence an industry…"*. Paras from the judgement relevant to the case of the Applicant are 58, 60, 63, 70, 112, 113, 131-144, holding medical education and training as well as services at hospitals to be an '*industry'*:

> "*58. So long as services are part of the wealth of a nation – and it is obscurantist to object to it- educational services are wealth, are 'industrial'. We agree with Isaacs, J.*
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> *--x--*
>
> *60. ... If education and training are integral to industrial and agricultural activities, such services are part of industry even if highbrowism may be unhappy to acknowledge it. It is a class-conscious, inegalitarian outlook with an elitist aloofness which makes some people shrink from accepting educational institutions, vocational or other, as industries. The definition is wide, embraces training for industry which, in turn ensconces all processes of producing goods and services by employer-employee co-operation. Education is the nidus of industrialization and itself is industry.*
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> *70. It is necessary to note that the hospital concerned in that case was run by Government for medical relief to the people. Nay more. It had a substantial educational and training role…. Medical education, without mincing words, is 'industry'..*
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> *--x—*
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> *113. Does research involve collaboration between employer and employee ? It does. The employer is the institution, the employees are the scientists, para-scientists and other personnel. Is scientific research service? Undoubtedly it is. Its discoveries are valuable contributions to the wealth of the nation. Such discoveries may be sold for a heavy price in the industrial or other markets. Technology has to be paid for and technological inventions and innovations may be patented and sold. In our scientific and technological age nothing has more cash value, as intangible goods and invaluable services, than discoveries. ….Research benefits industry. Even though a research institute may be a separate entity disconnected from the many industries which funded the institute itself, it can be regarded as an organisation, propelled by systematic activity, modelled on cooperation between employer and employee and calculated to throw up discoveries and inventions and*

> *useful solutions which benefit individual industries and the nation in terms of goods and services and wealth. It follows that research institutes, albeit run without profit-motive, are industries.*
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> *---x--*
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> *136. .... All that we can say is that there are different strands of reasoning in the judgment which are somewhat difficult to reconcile. Of course, when the learned Judge states that the use of the first schedule to the Act depends on the condition precedent of the existence of an industry, we agree. But, that by itself does not mean that a hospital cannot be regarded as an industry, profit or no profit, research or no research. We have adduced enough reasons in the various portions of this judgment to regard hospitals, research institutions and training centres as valuable material services to the community, qualifying for coming within Section 2(j). We must plainly state that vis-à-vis hospitals, Safdarjung was wrong and Hospital Mazdoor Sabha was right."*

5. The abovesaid majority view taken by this Hon'ble Court also charted out a litmus test to determine whether a particular service/trade/profession could be considered an '*industry'*. The Court propounded that an enterprise is an industry, if it is found that there is a systematic activity, which is organised by co-operation between an employer and employee for production or distribution of goods and services. It was clarified that the absence of profit motive or gainful objective is irrelevant in coming to such a determination **[para 140]**. Further, the Court laid down another test i.e., *a dominant nature test* in **para 143**, which aided in determining the basic disposition of an enterprise, if it deals in multitude of activities. Lastly, based on these tests, the majority view of this Hon'ble Court overruled the judgement in *Safdarjung Hospital v. Kuldip Singh Sethi* (1970) 1 SCC 735, which had held that hospitals imparting training and engaged in medical research cannot be considered an industry.

6. It is most respectfully submitted that the aforesaid tests propounded in *Bangalore Water Supply* have failed to stand the test of time, and suffer from inherent flaws which lead to the incongruous result of inclusion of a research and educational institute such as AIIMS within the ambit of industry. Such flaw is rooted in the fact that the tests so propounded do not take into consideration the intent and purpose behind the activities undertaken at a particular undertaking.

7. It is pertinent to highlight that subsequent to the judgement in *Bangalore Water Supply* (supra), the definition of the term '*industry'* was amended by the Industrial Disputes (Amendment) Act, 1982 ("Amendment Act, 1982"). Although the 1982 Amendment incorporated the tests laid down in *Bangalore Water Supply* to certain extent, it

excluded certain enterprises/services, including but not limited to hospitals/dispensaries and educational, scientific, research or training institutions. However, the amended definition has not been notified till date.

8. In *Union of India vs. Shree Gajanan Maharaj Sansthan* (2002) 5 SCC 44, this Hon'ble Court was concerned with the issue whether a writ of mandamus could be issued to the Central Government to give effect to provisions of the Industrial Disputes (Amendment) Act, 1982. In its judgment, this Hon'ble Court recorded the Central Government's stand that "… *enforcing the provision under clause (c) without providing for appropriate remedies to the employees working in hospitals, schools and temples they would, therefore, be rendered without any remedy in the event the said clause is put into force without enacting an appropriate law or making certain amendments in the existing laws"* as also the Government's affidavit as follows:

> *"(3) That the Industrial Disputes (Amendment) Bill, 1982 was introduced to amend the definition of the term 'industry'.*
> *(4) That the Government also introduced the Hospitals and Other Institutions (Settlement of Disputes) Bill in the Rajya Sabha.*
> *The former Bill was enacted but the latter bill was not pursued because of opposition to various provisions.*
> *As a consequence, the amended definition of the term 'industry' could not be brought into effect in the absence of alternative grievance machinery for employees in hospitals, educational institutions etc, who would have been denied the protection of the Industrial Disputes Act, 1947.*
> *(5) That another attempt was made by introducing, 'the Hospitals and Other Institutions (Redressal of Grievances of Employees) Bill', but it lapsed with the dissolution of the Lok Sabha in 1989."*

9. Thus, the definition of the term '*industry'* remained unaltered, up until the promulgation of the Industrial Relations Code, 2020. Notably, even the aforementioned Code has not been implemented yet.

10. Inasmuch as the Industrial Relations Code, 2020 has not specifically excluded research institutes and hospitals from the definition of industry, the issue remains live and subsisting for adjudication by this Hon'ble Court in the present matter.

11. The Applicant's submission that AIIMS cannot be categorised as an "*industry*" within the meaning of ID Act is based on the objects behind its establishment and the functions it performs. The Health Survey and Development Committee, in its report published in 1946 recommended the establishment of a national medical centre at Delhi to

concentrate on training well-qualified teachers and research workers in order to meet the needs of the health and welfare requirements of the country. This led to the establishment of the Applicant / AIIMS as an Institute of National Importance under the All-India Institute of Medical Sciences Act, 1956 ("**AIIMS Act**"). As per Section 13 and 14 of the AIIMS Act, the primary objects and functions of the institute, respectively, are *inter alia* as follows:

> *"**13. Objects of the Institute**— The objects of every Institute shall be—*
> *(a) to develop patterns of teaching in under-graduate and post-graduate medical education in all its branches so as to demonstrate a high standard of medical education to all medical colleges and other allied institutions in India;*
> *(b) to bring together in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and*
> *(c) to attain self-sufficiency in post-graduate medical education.*
>
> ***14. Functions of the Institute.**— With a view to promotion of the objects specified in section 13, every Institute may—*
>
> *(a) provide for under-graduate and post-graduate teaching in the science of modern medicine and other allied sciences, including physical and biological sciences;*
> *(b) provide facilities for research in the various branches of such sciences;*
> *(c) provide for the teaching of humanities in the under graduate courses;*
> *(d) conduct experiments in new methods of medical education, both under graduate and post-graduate, in order to arrive at satisfactory standards of such education;*
> *(e) prescribe courses and curricula for both under-graduate and post graduate studies;*
>
> *(f) notwithstanding anything contained in any other law for the time being in force, establish and maintain—*
>
> *(i) one or more medical colleges with different departments, including a department of preventive and social medicine, sufficiently staffed and equipped to undertake not only under graduate medical education but also post-graduate medical education in different subjects;*
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> *(ii) one or more well-equipped hospitals;*
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> *(iii) a dental college with such institutional facilities for the practice of dentistry and for the practical training of students as may be necessary;*
>
> *(iv) a nursing college sufficiently staffed and equipped for the training of nurses;*
>
> *(v) rural and urban health organisations which will form centers for the field training of the medical, dental and nursing students of the Institute as well as for research into community health problems; and*
>
> *(vi) other institutions for the training of different types of health workers, such as physiotherapists, occupational therapists and medical technicians of various kinds;*
>
> *(g) train teachers for the different medical colleges in India;*

(h) hold examinations and grant such degrees, diplomas and other academic distinctions and titles in under-graduate and post-graduate medical education as may be laid down in the regulations;

(i) institute, and appoint persons to, professorships, readerships, lectureships and posts of any description in accordance with regulations;

(j) receive grants from the Government and gifts, donations, benefactions, bequests and transfers of properties, both movable and immovable, from donors, benefactors, testators or transferors, as the case may be;

(k) deal with any property belonging to, or vested in, the Institute in any manner which is considered necessary for promoting the objects specified in section 13;

(l) demand and receive such fees and other charges as may be prescribed by regulations;

(m) construct quarters for its staff and allot such quarters to the staff in accordance with such regulations as may be made in this behalf;

(n) borrow money, with the prior approval of the Central Government, on the security of the property of the Institute"

12. The Statement of Object of the AIIMS Act has been succinctly stated in the AIIMS (Amendment) Act, 2012 as well: "*The main object of the aforesaid Act is to provide a high standard of medical education, both post-graduate and undergraduate, for all medical colleges and other allied institutions in the country to improve professional competence among medical practitioners and to attain self- sufficiency in post-graduate medical education and to promote medical research."*

13. Notably, the Institute of National Importance is entrusted from time to time with research projects by the World Health Organisation, the Indian Council of Medical Research and other government and semi-government bodies, which include sophisticated investigations in neurosciences, genetics and computer simulation of hormone-receptor interaction. AIIMS also undertakes clinical and epidemiological studies on the prevention and treatment of national health problems such as leprosy, malaria, tuberculosis, diabetes, diarrhoea, hepatitis, fluorosis and iodine deficiency. It is submitted that the institute was set up by a statute to carry on medical research to pave the way for medical advancement in the country.

14. The AIIMS Act also prescribes that the employment of officers and employee, as may be necessary for the discharge of its functions, may be done in accordance with the rules made by the Central Government. In the spirit of public health and welfare, few more AIIMS institutes were established in 2012 under the purview of Pradhan Mantri Swasthya Suraksha Yojana (PMSSY), with an objective of correcting the imbalances

in the availability of affordable or reliable tertiary level healthcare and also for improving facilities for quality medical education in India.

15. It is imperative to note that the AIIMS institutes were originally registered under the Societies Registration Act, 1860 but were subsequently given a statutory status by way of the AIIMS (Amendment) Act, 2012.

16. The question of whether a hospital where research and training activities are undertaken would be an "*industry*" was answered in the negative by this Hon'ble Court in ***Safdarjung Hospital v. Kuldip Singh Sethi*** **(1970) 1 SCC 735.** It is submitted that the *unanimous view* of the 6 Judge bench in *Safdarjung Hospital* had correctly recognised that every case of employment and relationship between employers and employees need not be an industry [**para 13**]. Furthermore, while it held that existence of profit motive was not necessary, but an enterprise must be "*analogous to trade or business in a commercial sense*" [**para 21**]. The judgment held that the commercial aspect must be taken into consideration, since it holds that a hospital run as a business would have elements of industry. Relevant extracts:

> "*23. …We may say at once that if a hospital, nursing home or dispensary is run as a business in a commercial way there may be found elements of an industry there. Then the hospital is more than a place where persons can get treated for their ailment. It becomes a business.*"

17. The said view is also supported by the finding in the judgment that the mere mention of "*service in hospitals and dispensaries*" in the First Schedule of the Industrial Disputes Act, 1947, as an industry which could be declared as a "*public utility service*", does not mean that every hospital is to be regarded as "industry". [**para 32**] This inevitably means that the purpose behind the establishment of an undertaking has to be looked into so as to determine independently whether it should be categorised as an industry.

18. In light of the above dicta, while considering the case of the Appellant therein i.e., Tuberculosis Hospital, this Hon'ble Court had unanimously considered not just the fact that it was a hospital run with beds, but also that it was being run with the dominant purpose of research and training. It was held that it could not be considered to be an industry:

> "*37. The Tuberclosis Hospital is not an independent institution. It is a part of the Tuberclosis Association of India. The hospital is wholly charitable and is a research institute. The dominant purpose of the Hospital is research and training, but as research and training cannot be given without beds in a hospital, the hospital is run. Treatment is thus a part of research and training. In these circumstances, the Tuberclosis Hospital cannot be described as an industry. ...*"

19. Notably, a 3 Judge bench of this Hon'ble Court had taken a contrary view in an earlier judgment in *State of Bombay & Ors. vs. Hospital Mazdoor Sabha & Ors.* AIR 1960 SC 610, whereby it held that:

> *"16. In considering the question as to whether the group of Hospitals run by the appellant undoubtedly for the purpose of giving medical relief to the citizens and for helping to impart medical education are an undertaking or not, it would be pertinent to enquire whether an activity of a like nature would be an undertaking if it is carried on by a private citizen or a group of private citizens. There is no doubt that if a hospital is run by private citizens for profit it would be an undertaking very much like the trade or business in their conventional sense. We have already stated that the presence of profit motive is not essential for bringing an undertaking within Section 2(j). If that be so, if a private citizen runs a hospital without charging any fees from the patients treated in it, it would nevertheless be an undertaking under Section 2(j). Thus the character of the activity involved in running a hospital brings the institution of the hospital within Section 2(j). Does it make any difference that the hospital is run by the Government in the interpretation of the word "undertaking" in Section 2(j)? In our opinion, the answer to this question must be in the negative. It is the character of the activity which decides the question as to whether the activity in question attracts the provision of Section 2(j); who conducts the activity and whether it is conducted for profit or not do not make a material difference."*

20. Pertinently, the said view was subjectively overruled by this Hon'ble Court in *Safdarjung Hospital* in para 24, 25 and 32:

> "*24. In the Hospital Mazdoor Sabha case hospitals run by Government and even by a private association, not on commercial lines but on charitable lines or as part of the functions of Government Department of Health were held included in the definition of industry. The reason given was that the second part of the definition of industry contained an extension of the first part by including other items of industry. As we have pointed out the first and the second parts of the definition are not to be read in isolation as if they were different industries but only as aspects of the occupation of employers and employees in an industry. They are two counterparts in one industry. The case proceeds on the assumption that there need not be an economic activity since employment of capital and profit motive were considered unessential. It is an erroneous assumption that an economic activity must be related to capital and profit-making alone. An economic activity can exist without the presence of both. Having rejected the true test applied in other cases before, the test applied was can such activity be carried on by private individuals or group of individuals? Holding that a hospital could be run as a business proposition and for profit, it was held that a hospital run by Government without profit must bear the same character. With respect, we do not consider this to be the right test. That test was employed to*

> *distinguish between the administrative functions of Government and local authorities and their functions analogous to business but it cannot be used in this context. When it was emphasised in the same case that the activity must be analogous to business and trade and that it must be productive of goods or their distribution or for producing material services to the community at large or a part of it, there was no room for the other proposition that privately run hospitals may in certain circumstances be regarded as industries. The expression "satisfying material human needs" was evolved which bore a different meaning. These observations were apparently based on the observations of Isaacs and Rich, JJ., in Federated Municipal and Shire Council Employees of Australia v. Melbourne Corporation [26 CLR 508] but they were: "Industrial disputes occur when, in relation to operations in which capital and labour are contributed in Cooperation for the satisfaction of human wants and desires, those engaged in Cooperation dispute as to the basis to be observed, by the parties engaged, respecting either a share of the produce or any other terms and conditions of their Cooperation.... The question of profit-making may be important from an income tax point of view, as in many municipal cases in England; but, from an industrial dispute point of view, it cannot matter whether the expenditure is met by fares from passengers or from rates.*
>
> *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."*

21. The interpretation of the term '*industry'* vis-a-viz hospitals and research institutes was once again overturned in *Bangalore Water Supply* (supra) when the ratio of *Safdarjung Hospital* was reversed by holding that the strands of reasoning in *Safdarjung* are irreconcilable and the ratio in *Hospital Mazdoor Sabha* (supra) was restored [**para 136, 144**] This observation is based on the fact that even though the Court in *Safdarjung* held that profit motive was irrelevant, at the same time it expounded the test that enterprises must be analogous to trade or business in a *commercial sense* for them to be considered "*industry*". The majority opinion in *Bangalore Water Supply* found the aforesaid reasoning to be contradictory. However, it is submitted that the reasoning in *Safdarjung* is completely reconcilable, inasmuch as there can certainly be undertakings which are not necessarily run with a profit motive but are aimed to engage in commercial acts of buying and selling of products/services. The terms "commercial sense" as used in *Safdarjung* is capable of being construed in the above sense, and does not render the test fallacious.

22. As stipulated above, the primary object and function of AIIMS, as an undertaking, is that of research, training and education in medical sciences. Undeniably, the research conducted at AIIMS is not done for any commercial purpose, but is rather directed towards advancement in the field of medical sciences, and ultimately, towards public health and welfare of the nation. The function of running a hospital is an ancillary part of the primary object of AIIMS, since research and training on treatment would require the said treatment to be also offered. It is submitted that this does not alter the nature, object and purpose of the institute. The services of all employees employed at AIIMS are utilised in furtherance of these stated objects and functions and cannot be construed dehors those stated objects and functions of AIIMS.

23. In light of the distinct nature and purpose for establishment of AIIMS, and the functions carried out by it, it would be erroneous for the same to be considered as an "industry" and to be brought within the ambit of Industrial Disputes Act, 1947. It is also submitted that the omnibus application of the tests stipulated in *Bangalore Water Supply* to hold AIIMS as an industry, without considering the true object and purpose with which AIIMS functions, would be incongruous with the meaning and purport of the term "industry".

24. Even otherwise, the functions of research and health care provided by AIIMS are of such nature that they require an atmosphere of work different from a typical industrial establishment that is involved in simplicitor manufacture or production of goods and services (irrespective of profit motive). It is humbly submitted that an appropriate and conducive environment for medical research include (i) minimal instances of strife between the employer and employee and (ii) minimal/negligible disruption of work due to any such strife. It is for this purpose, that despite the decision in *Bangalore Water Supply* holding both hospitals and research institutes to be industry, the Parliament, in its wisdom, considered it fit to exclude both hospitals and research institutes from the definition of industry. The special needs for such kind of undertakings propelled the 1982 amendment to the Industrial Disputes Act, whose Statement of Objects and Reasons is as follows:

> "*2. …(ii) The Supreme Court in its decision in the Bangalore Water Supply Sewerage Board v. Rajappa, [(1978) 2 SCC 213 : 1978 SCC (L&S) 215 : AIR 1978 SC 548] had,*

while interpreting the definition of "industry" as contained in the Act, observed that Government might restructure this definition by suitable legislative measures. It is accordingly proposed to redefine the term "industry". While doing so, it is proposed to exclude from the scope of this expression, certain institutions like hospitals and dispensaries, educational, scientific, research or training institutes, institutions engaged in charitable, social and philanthropic services, etc., in view of the need to maintain in such institutions an atmosphere different from that in industrial and commercial undertakings and to meet the special needs of such organisations. It is also proposed to exclude sovereign functions of Government including activities relating to atomic energy, space and defence research from the purview of the term "industry"..."

25. Even though the said 1982 Amendment was not brought into effect, the express will of the Parliament in excluding certain kinds of institutions from the definition of industry ought to be taken into account by this Hon'ble Court.

26. It is extremely pertinent to note that the special character of an institute such as AIIMS vis-a-viz the exercise of rights in a typical industrial undertaking engaged in commerce has been considered by courts at various instances. Especially, it has been held the right to strike must be exercised in a restricted fashion in such an institution, keeping in mind the nature and purpose of activities undertaken therein. In ***Scheduled Castes and Scheduled Tribes Medical Association (Regd.) Delhi v. Union of India*** **2011:DHC:1046-DB**, a Division Bench of the Hon'ble Delhi High Court observed as follows:

"whether the doctors, interns and junior residents in AIIMS can go on strike for whatever reason and further coerce the willing doctors not to discharge their duty on any count whatsoever; whether the competent authorities in charge of the said institutions are accountable to take appropriate action against the erring doctors on proper identification or show leniency for such transgression and delinquency…"

27. The Hon'ble High Court was pleased to record the severe impact of the bandhs and strikes on the patient care the institute provides:

"3. As set forth, the strikes had a tremendous impact and the patients suffered as emergency services were shut down; the patients waiting for treatment remained in the hospital being untreated in serious condition; the patients who were admitted to have surgery and other advanced treatment remained in agony; and further certain doctors, who wanted to help, aid or assist the patients, were coerced and compelled not to attend the patients. It is urged that the doctors, regard being had to their nature of duties, responsibilities, professional ethics and the right of a citizen under Article 21 of the Constitution to avail treatment cannot go on strike or take recourse to demonstration or protest paralyzing the system. In this backdrop, prayers have been made to declare that the doctors and the teaching faculty at AIIMS or for that matter any government or private hospitals cannot go on strike or demonstration or coerce the willing doctors to attend the patients and appropriate disciplinary action be taken against the doctors who had gone on strike….

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10. Before we delve into the issue whether strike can be taken recourse to and the willing doctors or students can be coerced to participate in the said strike, we think it appropriate to highlight the significance of duties in a hospital by a doctor in

whichever post he is, para medical staff, nurses, chowkidars, sweepers or any other staff involved with the hospital. The said aspects, needless to emphasize, have inextricable nexus with health. Health is the basic requirement for the preservation of body the human frame which is the manifestation of life that is seen. It should be borne in mind that life is a glorious gift from God. It is the perfection of nature, a master-piece of creation. Human being is the epitome of the infinite prowess of the divine designer. Great achievements and accomplishments in life are possible if one is permitted to lead an acceptably healthy life. Health is life"s grace and efforts are to be made to sustain the same. The Government is required to assist people and its endeavour should be to see that the people get treatment and lead a healthy life. Healthy society is a collective gain and no institution should make any maladroit attempt to smother it.

…

30. We have referred to the objects and reasons and the provisions of the Act and the decision in A.I.I.M.S. Students Union (supra) only to highlight the significant, meaningful and pregnant role played by A.I.I.M.S. in the field of medical education and carrying on of research and delivering of sophisticated latest treatment facilities to the patients."

28. The stark difference between the impact of industrial action (i.e., strike) in an institute such as AIIMS, and regular factory or trading establishment was also considered by the Hon'ble Delhi High Court in ***Court on its own Motion v. All India Institute of Medical Sciences*** **(2002) 64 DRJ 418**, as follows:

"*6. We are conscious of the fact that employees ordinarily also have a right to agitate their grievances by way of peaceful action including collective bargaining and collective action. However, considering the special circumstances of the AIIMS as an Institution and particularly the sensitive nature of such a super-speciality referral hospital requiring the uminterrupted and smooth functioning of each and every sphere of activity as also the space and locational constraints such as ICU/Emergency/Trauma Centre open all located close to the entrance and exist areas, and also Blood Bank facilities life saving medicines and devices being required at short notice, as well as unimpeded movement of medical and para-medical personnel having to be ensured at all times, it would be appropriate and in the interest of justice and also in public interest, that there should be no activity in the nature of strike, dharna or demonstration or gherao at, or in, or around the AIIMS at all.*

7. The impact of a strike in a hospital is totally different from that in the case of a factory or trading establishment. Ailing patients cannot be left waiting or un-attended. Hospital activity is not the same as the lifeless functioning of machines in a factory, or movement of trading material or other forms of commerce. Almost all the activities in relation to hospital are such as require constant and incessant attending and care and, therefore, unlike a factory or trading establishment, the patients cannot be permitted to be deserted by striking staff. Unlike financial losses, the loss of life or limb cannot be recouped. Reference may be made to the judgment of Single Judge of Bombay High Court in Baratiya Arogya Nidhi Sheth Kantilal C. Parikh General Hospital v. Bombay Labour Union, 2001 LLR 587 (Bom)

8. Hospitals are also public utility service within the meaning of Industrial Disputes Act. It was also the intention of Parliament, as is envisaged by the 1982 amendment to the definition of 'industry' under the Industrial Disputes Act, that hospitals have been excluded from the scope of definition of industry and from the purview of the Industrial Disputes Act, 1947. Even though the said amendment has not been brought into force but it does reinforce the position that "hospitals" have to be treated as a class apart from "industry"."

29. It is humbly submitted that the aforesaid decisions only substantiate the proposition that AIIMS is not similarly situated/placed with other factory/trading establishments, and the difference arises from the nature and purpose of the activities undertaken at AIIMS.

30. It is also pertinent to mention that vide the judgment in ***Court in its own Motion v. AIIMS*, 2002 (64) DRJ 418**, the Hon'ble High Court had directed for constitution of Permanent Negotiating Machinery ("**PNM**"). The said PNM Committee at AIIMS was constituted, as per directions passed by the Hon'ble Court and continues to be functional. The machinery was set up with an objective to resolve any sudden incidents which may disrupt the smooth functioning at AIIMS. Additionally, the Hon'ble Court was pleased to provide a Code of Conduct which would apply to employees at AIIMS:

> *"(i) No employee of staff of faculty member will cease work for any reason whatsoever or disrupt the work, or aid, or abet such disruption or cessation;*
> *(ii) No use of loud speakers or shouting of slogans, demonstrations, Dharna within the campus.*
> *(iii) No gate meetings or protest meetings of any kind whatsoever are to be held within the radius of 500 Mtrs. from the boundary of the Institute;*
> *(iv) No interference in any official work.*
> *(v) No resort to any disruptive activity.*
> *(vi) All Trade Union activities will be carried outside the campus;*
> *(vii) Any violation will result into disciplinary and other actions;"*

31. In light of the above, it would be incongruous and contrary to the objects of the ID Act for a research institute such as AIIMS, that also provides indispensable health care services without any profit motive, to be categorised as an "*industry*". Owing to the special nature of the institute, the position that AIIMS must be held apart from the definition of "*industry*" cannot be more evident.

32. It is also submitted that the object and purpose behind enactment of the ID Act, as evident from the Statement of Objects and Reasons, was to address the lacunae existing in the erstwhile Trade Disputes Act, 1929 (which was ultimately replaced by the ID Act). The relevant extracts of the Statement of Objects and Reasons of the ID Act are reproduced as under:

> "*Experience of the working of the Trade Disputes Act, 1929, has revealed that its main defect is that while restraints have been imposed on the rights of strike and lock-out in public utility services no provision has been made to render the proceedings institutable under the Act for the settlement of an industrial dispute, either by reference to a Board of Conciliation or to a Court of Inquiry, conclusive and binding on the*

> *parties to the dispute. This defect was overcome during the war by empowering under Rule 81-A of the Defence of India Rules, the Central Government to refer industrial disputes to adjudicators and to enforce their awards. Rule 81-A, which was to lapse on the 1st October, 1946, is being kept in force by the Emergency Powers (Continuance) Ordinance, 1946, for a further period of six months; and as industrial unrest, in checking which this rule has proved useful, is gaining momentum due to the stress of postwar industrial readjustment, the need of permanent legislation in replacement of this rule, is self-evident. This Bill embodies the essential principles of Rule 81-A, which have proved generally acceptable to both employers and workmen, retaining intact, for the most part, the provisions of the Trade Disputes Act, 1929.*"

33. It may be noted that the enactment of the Trade Disputes Act, 1929 and the development of mechanism such as the Rule 81-A of the Defence of India Rules was to ensure that industrial production during times of war was not hampered due to industrial actions such as strikes. The enactment of such legislation was a result of the workers' struggles to earn a share of the profits of the employer, and therefore was necessarily based on a direct element of commerce. It is respectfully submitted that the interpretation of any provisions of the ID Act, (and especially the definition of "*industry*") cannot be undertaken in isolation of the said background/context. The subsequent legislation in the form of ID Act did not contain anything to show that the legislature intended to deviate from the scope of the Trade Disputes Act, 1929. In light of the same, it is submitted that any test for determining "*industry*", which absolutely disregards the profit motive or object of the undertaking would be contrary to the objects and intent of the ID Act.

34. It is further submitted that even though *Bangalore Water Supply* provided for a liberal interpretation of the term "industry", the same must be understood to have been in tandem with the prevailing socio-economic conditions of that time. However, this Hon'ble Court, while deciding issues of wide-reaching economic and social ramifications, has considered the socio-economic conditions prevalent at the time (***BALCO Employees Union vs. Union of India* & Ors. (2002) 2 SCC 333, para 51** and para 35 of ***Zee Telefilms v. Union of India* (2005) 4 SCC 649, para 35**).

35. It is submitted that the widest interpretation of the term industry, as applied in *Bangalore Water Supply*, is unsuitable and discordant in the present socio-economic conditions which are marked by a completely liberalised economy and high dependence on technological advancement and research, particularly in medical sciences. It is respectfully submitted that any interpretation of the term industry vis-à-vis research and educational institutes ought to be done in the present sociology-economic context.

36. It is therefore respectfully submitted that the meaning ascribed to the term "*industry*" by the majority view in *Bangalore Water Supply* ought to be held reversed by this Hon'ble Court inasmuch as profit motive and the intent and purpose behind an undertaking have been held to be completely irrelevant to its character as an "*industry*".

37. It is further submitted the minority opinion in *Bangalore Water Supply* had correctly found that the definition of industry could not be extended to certain kind of undertakings (such as hospitals and research institutes), and the test must be limited to activities undertaken on commercial lines by private entrepreneurs:

> "*185. …Expressed differently, it means that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it), we are of the view that despite the width of the definition it could not be the intention of the legislature that Categories 2 and 3 of the charities alluded to by our learned Brother Krishna Iyer in his judgment, hospitals run on charitable basis or as a part of the functions of the Government or local bodies like municipalities and educational and research institutions whether run by private entities or by Government and liberal and learned professions like that of doctors, lawyers and teachers, the pursuit of which is dependent upon an individual's own education, intellectual attainments and special expertise should fall within the pale of the definition. 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 co-operation 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."*

38. Accordingly, it is submitted that AIIMS, being (i) a premier research institute of national importance, (ii) engaged in training and provision of health care services, (iii) on a not-for-profit basis and (iv) being funded by the Central Government by way of allocation in budget be held to be not an "industry" under the ID Act.

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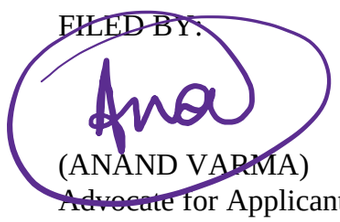

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NEW DELHI
31.12.2023

WRITTEN SUBMISSION OF DR. VIVEK SHARMA

[IN I.A. NO. 126561/2024 IN CIVIL APPEAL No. 897/2002]

1. In this matter, the key issues are :

   i. Whether the definition of 'industry' under Section 2(j) of the Industrial Dispute Act 1947 should be read restrictively?

   ii. Whether the majority judgement in the Banglore Water Supply case was a unanimous judgement?

   iii. Whether a restrictive reading of Industry in Industrial Dispute Act to promote a harmonious relationship between the employer and the employee?

2. The term 'Industry' is defined under Section 2(j) of the Industrial Dispute Act 1947. The definition provided is quite precise and its scope is yet to be determined- whether broad or restrictive. Industry plays an important role in developing economy of the nation. Laws are equally essential for any development in technological field because without protection, without laws, there would be violation of human rights which a democratic country cannot afford.

   This honourable Supreme Court has also asked the legislature to clarify what exactly the definition aim to cover. In 1982, Parliament passed an amendment to the Industrial Dispute Act, which created several exceptions to the definition. But this amendment

was never notified by the government and so the original definition under the Industrial Dispute Act 1947 continues to be the law in force. In 1978, the word 'industry' was interpreted widely by a bench of seven judges under the I D Act 1978 in the case of Banglore water supply. It was held that, 'industry' has to be read widely in the light of broad definition in the I D Act.

In the light of broad definition, every profession; even universities, charitable organisations and autonomous institutions are included within the ambit of industry. The court ruled that, there must be a minimum number of employees for a business or profession to be considered an industry.

Besides any person who works in an industry under I D Act is entitled to the various benefits and protection under the Act.

In the recent time, various stringent labour standards demands for restrictive reading of the word 'industry'.

So, while deciding the issue of definition of 'industry', along with statutory provisions, the court should also consider it from the angle of workers, from the angle of other stakeholders i.e. employer and from the angle of society as a whole. The definition of 'industry' may be limited to the manufacturing sector.

Restrictive reading of industry under I D Act will promote a harmonious relationship between the employer and the employee. It will also be beneficial for the society and development of the economy and nation.

Minimum Time required for Oral Argument- Thirty Miniutes

(30 Min.)

VK Sharma

DR. VIVEK SHARMA

Date- 21/02/2026

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 897 OF 2002

IN THE MATTER OF:

STATE OF UTTAR PRADESH ...APPELLANT

VERSUS

JAIBIR SINGH …RESPONDENT

INDEX

Filed on : 28.02.2026

Filed by:-

Samar Vijay Singh
Advocate for State of Haryana

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 897 OF 2002

IN THE MATTER OF:

STATE OF UTTAR PRADESH ...APPELLANT

VERSUS

JAIBIR SINGH …RESPONDENT

WRITTEN SUBMISSIONS ON BEHALF OF STATE OF HARYANA

1. **Preliminary:**

a. These written submissions are being filed on behalf of State of Haryana in the present batch of matters, which has been referred to the Hon'ble Nine Judge Bench of this Hon'ble Court, concerning the interpretation of the expression "industry" under Section 2(j) of the Industrial Disputes Act, 1947 ("ID Act"). It is to be noted that thirteen Appeals have been filed by the State of Haryana which involve the *Forest* and the *Irrigation* Departments.

b. The fundamental issue relevant to the State of Haryana is '*whether core governmental departments like the Irrigation & the Forest Department, discharging constitutional, statutory and inalienable sovereign obligations can be brought within the ambit of "industry" under Section 2(j) or not.'*

c. It is submitted that such departments discharging inalienable sovereign/statutory functions clearly fall outside the ambit of "industry" under Section 2(j) of Act. Activities undertaken in exercise of constitutional mandates, regulatory powers and essential governance responsibilities cannot be equated with trade,

business or commercial undertakings. In this background, it is submitted that the expansive interpretation adopted in '*Bangalore Water Supply and Sewerage Board v. R. Rajappa* (1996) 2 SCC 293' warrants reconsideration by this Hon'ble Court, because such an expansive interpretation has blurred traditional boundaries, bringing diverse sectors under labour law protections. As India's economic landscape evolves, understanding what qualifies as an "industry" becomes critical for employers, employees, and policymakers alike.

d. Therefore, the present reference before this Hon'ble Nine-Judge Bench affords an appropriate opportunity to clarify and suitably confine the scope of the said decision in consonance with constitutional principles and legislative intent.

2.**Facts in a nutshell**

a. In the batch of thirteen Special Leave Petitions/Civil Appeals filed by the State of Haryana before this Hon'ble Court, the Respondents/workmen had either voluntarily left service or their engagements had otherwise come to an end in their respective departments, including the Forest and Irrigation Departments. Aggrieved thereby, the Respondents raised industrial disputes and approached the Ld. Labour Court by way of Claim Petitions under the Industrial Disputes Act, 1947. The Labour Court allowed the Claim Petitions and granted relief in favour of the Respondents/workmen.

Challenging the said Awards, the State of Haryana preferred writ petitions before the Hon'ble High Court of Punjab and Haryana, *inter alia*, contending that the Forest and Irrigation Departments discharge sovereign and governmental functions and, therefore, do not fall within the ambit of the term "industry" as

defined under Section 2(j) of the Industrial Disputes Act, 1947. It was specifically contended that in the absence of the essential jurisdictional requirement of the establishment being an "industry", the Labour Court lacked competence to entertain the disputes, rendering the Awards without jurisdiction and unsustainable in law.

However, the Hon'ble High Court dismissed the writ petitions filed by the State, rejecting the aforesaid jurisdictional objection and affirming the Awards passed by the Ld. Labour Court.

3. **Legislative Scheme and Actual Object of the Industrial Disputes Act, 1947**

a. The Industrial Disputes Act, 1947 was enacted to regulate industrial conflicts arising in trade, business, manufacture and organised economic activity. The Act seeks to ensure industrial peace and harmony in sectors engaged in economic and commercial operations. The term "industry" is defined under Section 2 (j) of the Industrial Disputes Act, 1947 and the same is reproduced herein:

> *"(2j) 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"*

b. It is submitted that the Industrial Disputes Act was never intended to cover every form of public employment or to bring core governmental and sovereign functions of the State within the scope of industrial adjudication. The structure/framework of the Act, particularly its provisions relating to strikes, lockouts,

retrenchment and closure clearly contemplates an economic or commercial establishment. These provisions are not designed to regulate essential functions of governance carried out by government departments in discharge of constitutional and statutory duties.

c. Further, the Industrial Disputes (Amendment) Act, 1982, though not notified is very much indicative of the legislative concern regarding the over-expansive interpretation of the term "industry". The proposed amendment expressly sought to exclude, *inter alia*, hospitals, educational institutions, charitable organisations and sovereign functions of the State from the scope of Section 2(j). While the amendment remains unnotified, it reflects a clear legislative intent to confine the application of the Act to industrial and commercial activities, and not to core functions of governance.

4. **Industrial Relations Code, 2020- Object & Impact**

a. The Industrial Relations Code, 2020 (with effect from 21.11.2025) consolidates three major labour laws: *The Industrial Disputes Act, 1947, Trade Unions Act, 1926 and the Industrial Employment (Standing Orders) Act, 1946*. This consolidation aims to simplify and modernize labour regulations, making them more accessible and easier to comply with. The Code represents the Parliament's latest policy thinking on industrial jurisprudence and was introduced in response to the complexities and outdated nature of India's Labour Laws, which had become a regulatory maze.

b. Section 2(p) of the Industrial Relations Code defines "industry" in substantially similar language to Section 2(j) of the ID Act, but with **important structured exclusions**.

Section 2(p) of the Code is reproduced herein:

"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;

c. The Code expressly excludes institutions owned or managed by organisations wholly or substantially engaged in charitable, social or philanthropic service and **activities of the appropriate Government relatable to sovereign functions including Defence Research, Atomic Energy, Space,** any other activities notified by the Central Government. The Code's statutory recognition of a sovereign function exclusion, marks a clear

legislative intent to confine the scope of “industry” and prevent its over-expansion into core governmental functions.

d. It is submitted that in a modern constitutional welfare State, sovereignty is not confined merely to traditional functions such as defence or policing. Constitutional mandates under Article 48A (protection and improvement of environment) and Article 39(b) (distribution of material resources for the common good) demonstrate that environmental protection and water resource management form part of the essential responsibilities of the State. These are not commercial ventures, but obligations flowing from the constitutional scheme itself.

e. The Forest Department and the Irrigation Department discharge precisely such sovereign and public trust functions and the mere engagement of labour for execution of duties of the concerned Departments cannot alter the intrinsic character of these functions.

f. By recognising a sovereign function exclusion, the Code narrows the definition of “industry” and reinforces the principle that core governmental departments performing constitutional obligations stand outside the industrial adjudicatory framework. In light of this legislative development, it is submitted that the Forest and Irrigation Departments ought not to be brought within the ambit of “industry”.

5. <u>Forest Department & its Nature and Functions</u>

a. It is submitted that the Forest Department of the State of Haryana performs functions including Afforestation and Reforestation, Wildlife Conservation, Protection of reserved forests, Implementation of statutory forest laws, Environmental restoration etc.

b. It is very crucial to bring into notice before this Hon'ble Court that these activities performed by the Forest Department are regulatory and conservation-oriented in nature. They are undertaken in discharge of statutory duties and constitutional mandates, not with profit motive or commercial gain.

c. Thus, the sheer act of engaging labour for plantation or maintenance work in the Forest Department does not transform conservation activity into industrial production.

d. The Forest Department does not operate in a competitive market nor produce goods for trade in the industrial sense contemplated under the ID Act. Therefore, the forest department very evidently does not fall under the ambit "industry" under Section 2(j) of the Act.

e. It is relevant to mention that this Hon'ble Court in the case of '*Conservator of Forests and anr. v. Jagannath Maruti Kondhare & others* (1996) 2 SCC 293' had observed that a scheme framed for the creation of a park, intended to fulfil the recreational and educational aspirations of the public, could not be regarded as part of the inalienable or inescapable sovereign functions of the State. It was observed that such an activity could well be undertaken by an agency not necessarily required to be an instrumentality of the State, and accordingly held that the said activity would fall within the ambit of "industry" under Section 2(j) of the Industrial Disputes Act, 1947.

However, in a subsequent decision in '*State of Gujarat & Ors. v. Pratamsingh Narsinh Parmar*, (2001) 9 SCC 713', this Hon'ble Court distinguished *Jagannath Maruti Kondhare* (supra) and clarified that, ordinarily, a government department performing statutory and sovereign functions cannot be characterised as an

"industry". The Court emphasised that activities integrally connected with governance and discharge of constitutional or statutory obligations partake the character of sovereign functions and stand on a different footing from ancillary or recreational activities capable of being outsourced or undertaken by non-State entities. It was further held that where a dispute arises as to whether a particular establishment, or a part of it, is an "industry", the burden lies on the person asserting that it is an industry to produce positive evidence in support of such claim. In other words, it is for the party claiming the benefit of the Industrial Disputes Act to establish that the establishment satisfies the requirements of Section 2(j).

f. The aforementioned cases are the biggest reason why there is a need for clear and authoritative clarification by this Hon'ble Bench regarding the scope of sovereign functions and the proper limits of Section 2(j).

g. Further-on, the work carried out by various Government departments is part of the essential and sovereign functions of the State. These duties arise out of constitutional and statutory obligations and cannot be entrusted to or performed by private or independent agencies. Since such functions are inherent to governance and are not commercial or business activities, the departments performing them cannot be treated as an "industry" under Section 2(j) of the Industrial Disputes Act, 1947.

6. Irrigation Department & its Nature and Functions

a. The Irrigation Department of the State of Haryana is responsible for planning, design, construction and maintenance of irrigation projects, as well as flood control, water management and development of water resources to support

agriculture and ensure food security within the State. These functions relate to sovereign management of natural resources and public infrastructure for the overall welfare of the State.

b. This Hon'ble Court, in '*The State of Madhya Pradesh & Ors. v. Somdutt Sharma*, Civil Appeal No. 6093 of 2021', has categorically held that the Irrigation Department does not fall within the ambit of "industry" under Section 2(j) of the Industrial Disputes Act, 1947. It was observed that the primary functions of the Irrigation Department are public welfare, water resource management and discharge of sovereign responsibilities of the State. Such functions are undertaken in furtherance of governmental obligations and are not in the nature of manufacturing, trade or commercial business. Accordingly, the Department cannot be treated as an industrial establishment merely because it engages labour for execution of its projects.

c. Thus, the activities undertaken by the Irrigation Department are neither commercial nor undertaken with any profit motive, but are carried out in discharge of statutory and constitutional responsibilities. Therefore, the Irrigation Department cannot be construed as an "industry" within the meaning of Section 2(j) of the Act.

7. Welfare Schemes Do Not Automatically Become "Industry"

a) It is submitted that not all social welfare activities or governmental schemes can be interpreted as "industrial activities" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The applicability of the Act depends upon the nature and character of the function discharged. The mere fact that the State undertakes welfare schemes in which public funds are utilized, employees are

engaged- does not convert such activity into an "industry" unless the activity satisfies the essential elements of industrial or economic enterprise.

b) It is important to note here that when the main purpose of the activity is public welfare, environmental protection, irrigation management, forest conservation, public administration, and not production or distribution of goods and services in a commercial sense, such activity cannot be brought within Section 2(j) of the Act.

8. Why the *Bangalore Water Supply Case* needs to be reconsidered?

a. This Hon'ble Court in the case of '*Bangalore Water Supply & Sewerege Board etc. v. A. Rajappa & Ors. (1978) 2 SCC 213'* laid down a triple test to define an "industry" under Section 2(j) of the ID Act.

b. The criteria under the Triple Test principle were- i) there should be a systematic activity ii) such activity should be organized by cooperation between employer and employee & iii) the activity should be carried for the production/supply of goods and services.

c. It is submitted that the said triple test is highly over-inclusive and needs correct interpretation and reconsideration by this Hon'ble Court. The reasons for reconsideration are:

i. It **focuses on organisational structure rather than constitutional character;**

ii. It effectively **blurs the distinction between sovereign governance and commercial enterprise;**

iii. It **renders the doctrine of sovereign functions ineffective;**

iv. It **treats all organised activity as industrial, irrespective of its public law character.**

d. In view of the above inconsistencies, it is submitted that this Hon'ble Nine-Judge Bench may clarify that activities undertaken by the State Government in discharge of its sovereign, regulatory, constitutional or public trust duties, through its core departments, do not fall within the definition of "industry" under Section 2(j) of the Industrial Disputes Act, 1947.

e. Hence, it is suggested that the "Triple Test" may be refined /amended to incorporate the nature and character of the function, not merely the presence of organized labour.

9. **<u>Conclusion:</u>**

a) In view of the foregoing submissions, it is submitted that the interpretation of the term "industry" in *Bangalore Water Supply and Sewerage Board v. A. Rajappa* has, in practice, been extended beyond its legitimate limits. The Industrial Disputes Act, 1947 was enacted to regulate industrial and economic activities, not core sovereign, statutory or constitutional functions of the State. Departments discharging essential governmental duties, such as the Forest and Irrigation Departments of the State of Haryana, cannot be equated with commercial enterprises merely because they employ personnel or undertake organized activities. To treat such functions as "industry" under Section 2(j) would blur the distinction between

governance and trade and expand the Act beyond legislative intent.

b) Further, the Industrial Disputes (Amendment) Act, 1982, though not brought into force, reflected Parliament's intent to narrow and clarify the scope of "industry", and the Industrial Relations Code, 2020, brought into force from 21.11.2025, provides a redefined and structured understanding of the term. These legislative developments indicate that the definition of "industry" was not intended to be interpreted in an unduly expansive manner.

c) Social welfare activities and schemes undertaken by Government Departments in discharge of sovereign or statutory obligations cannot, merely because they are organized or systematic, be construed as "industrial activities". The dominant nature of the function must govern the inquiry, and core governmental functions stand excluded.

d) It is therefore submitted that core sovereign and constitutional functions must remain outside the ambit of "industry", and the present matters deserve to be decided accordingly by the Hon'ble Nine Judge Bench of this Hon'ble Court.

Filed on : 28.02.2026 FILED BY

Samar Vijay Singh

Advocate for State of Haryana

SECTION – XV

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3119 OF 2011

IN THE MATTER OF:

Central Council for Research in Ayurveda Siddha
Now known as
Central Council for Research in Ayurveda Sciences

… Appellant

Versus

Brijesh Kumar Sharma … Respondent

INDEX

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PLACE: NEW DELHI
DATED: 27.02.2026

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

C.A. No. 3119 OF 2011

IN THE MATTER OF:

CENTRAL COUNCIL FOR RESEARCH IN AYURVEDA AND SIDDHA ...APPELLANT

VERSUS

BRIJESH KUMAR SHARMA …RESPONDENT

WRITTEN SUBMISSIONS ON BEHALF OF THE APPELLANT

I. BRIEF FACTS

1. That the Appellant is an autonomous research institute under the Ministry of AYUSH, Government of India and the Respondent was engaged as Labour-cum-Ward boy on daily wage basis by M.S. Regional Ayurveda Research Institute, Jaipur, one of the sub-institute of Appellant, on 05.09.1994. That the Respondent worked with Appellant until 17.10.1995, with break in service, and was disengaged on 18.10.1995.

2. That Respondent on being aggrieved by his disengagement, raised an industrial dispute before the Ld. Jt. Labour Commissioner, Jaipur, on 29.01.1997, however the conciliation proceedings before the Ld. Commissioner failed, and therefore the following dispute was referred by the Ministry of Labour & Employment u/s 10(1)(d)(2a) of the Industrial Disputes Act, 1947 to CGIT-cum-Labour Court, Jaipur, Rajasthan: **(Reference cited @ Pg. 26)**

3. That taking cognisance upon reference received, the Ld. Presiding Officer of CGIT-cum-Labour Court, Jaipur, Rajasthan, framed six issues for adjudication **(Issues framed @ Pg. 28-29**), and an award dated 03.01.2001

was passed in favour of the Respondent, whereby Appellant herein was directed to pay 50% of the back wages to Respondent and reinstate Respondent in service, however Appellant was granted liberty to terminate the services of the Respondent after complying with the provisions of Section 25-F of the Act. **(Findings of award @ Pg. 38)**

4. That the Appellant thereafter challenged the aforesaid award dated 03.01.2001 before the Jaipur Bench of the Hon'ble High Court of Rajasthan vide Civil Writ Petition No. 4504/2001 which was dismissed by the Ld. Single Judge, vide order dated 01.10.2001, thereby observing that it is too late to argue that Appellant is not an industry and thus the Petition is dismissed. **(Findings by Ld. Single Judge @ Pg. 64-65)**

5. That being aggrieved of the order dated 01.10.2001, Appellants filed an appeal vide Special Appeal Writ No. 942/2002, before the Division Bench at Jaipur of the Hon'ble High Court of Rajasthan which was dismissed in limine, against which order Appellants thereafter approached this Hon'ble Court vide Civil Appeal No. 311/2004, which was disposed of vide order dated 16.01.2004, whereby this Hon'ble Court remitted the matter back to the Hon'ble High Court to decide the point "whether Appellant is an industry". **(Findings in Civil Appeal No. 311/2004 @ Pg. 89-90)**

6. That pursuant to the directions of this Hon'ble Court in Civil Appeal No. 311/2004, the Hon'ble Division Bench at Jaipur of the Hon'ble High Court of Rajasthan, vide impugned order dated 28.10.2001, dismissed the Appeal preferred by the Appellant, thereby observing that Appellant could not make out a case that it does not fall within the definition of Industry as provide under the Act, 1947. **(Findings by the Hon'ble Division Bench @ Pg. 12-13)**

II. QUESTIONS INVOLVED IN THE PETITION:

1. Whether, on a true interpretation of Section 2(j) of the Industrial Disputes Act, 1947, the Central Council for Research in Ayurvedic Sciences ("CCRAS"), a

government-controlled research council in the field of Ayurveda, falls within the definition of "industry"

2. Whether the Division Bench of the Rajasthan High Court erred in holding CCRAS to be an "industry" by placing undue reliance on certain incidental financial and property-related clauses in the MoA and by distinguishing **Physical Research Laboratory v. K.G Sharma, (1997) 4 SCC 257**, on an erroneous factual premise.

3. In the alternative, assuming arguendo that CCRAS is an "industry", whether the engagement and disengagement of the Respondent, a daily-rated worker engaged for specific periods and specific work, constitute "retrenchment" within Section 2(oo) in view of Section 2(oo)(bb) and the law laid down, *inter alia*, in **Himanshu Kumar Vidyarthi v. State of Bihar, AIR 1997 SC3657**

III. STATUTORY FRAMEWORK AND EVOLUTION OF THE "INDUSTRY" TEST

1. Section 2(j) of the ID Act defines "industry" as follows:

2. "2(j) 'industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or a vocation of workmen."

3. In Bangalore Water Supply, a seven-Judge Bench propounded a very wide three-fold test, summarised inter alia in para 161,requiring: (i) systematic activity; (ii) organised by co-operation between employer and employee; and (iii) directed to the production and/or distribution of goods and services "calculated to satisfy human wants and wishes", while de-emphasising profit motive and sectoral location. At the same time, the Court cautioned that the word "undertaking" must receive acontextual and associational "shrinkage" and that sovereign functions, "strictly understood", are excluded from the definition.

4. Subsequent experience with the very wide sweep of Bangalore Water led this Hon'ble Court in **Coir Board, Ernakulam v. Indira Devi, AIR 1998 SC 2801,** to observe that application of the Bangalore test "might have done more damage than good" by bringing within the ID Act organisations "which were quite possibly, not intended to be so covered" and that such application may have curtailed employment opportunities. The Court noted that the test "that every organization which does useful service and employs people" is not contemplated by the Act and recommended that Bangalore Water be reconsidered by a larger Bench.

5. Acting upon this concern, State of U.P. v. Jai Bir Singh, and a batch of matters have been referred to a larger Bench to re-examine the correctness and sweep of Bangalore Water, including the proper ambit of "industry" under Section 2(j). The present appeal is part of this batch, and the question whether entities such as CCRAS are covered by the ID Act arises squarely for authoritative determination.

IV. LEGAL CHARACTER, OBJECTIVES, AND STRUCTURE OF CCRAS

1. CCRAS is a society registered under the Societies Registration Act,1860, with its Memorandum of Association and Rules &Regulations constituting its founding charter.

2. Clause 4 of the Memorandum sets out the objectives for which CCRAS is established. The foremost objective is "To formulate aims and patterns of research on scientific lines in Ayurvedic Sciences."

3. Other key objectives include:

3.1. To undertake any research or other related programmes in Ayurvedic Sciences including undergraduate, post-graduate and post-doctoral educational programmes in Ayurvedic Sciences.

3.2. To prosecute and assist in research, the propagation of knowledge and experimental measures generally in connection with the causation, mode of spread and prevention of diseases.

3.3. To initiate, aid, develop and coordinate scientific research in different aspects, fundamental and applied aspects of Ayurvedic Sciences and to promote and assist institutions of research for the study of diseases, their prevention, causation, treatment and remedy.

3.4. To provide technical and financial support for research for the furtherance of objectives of the Central Council.

3.5. To exchange information with other institutions, associations and societies interested in the objects similar to those of the Central Council and especially in observation and study of diseases in East Asia and in India, in particular.

3.6. To establish, equip and maintain laboratories, libraries, Institutions and other facilities necessary to fulfil the Objectives of the Central Council.

4. It is pertinent to mention here that none of these primary objectives bears the character of a commercial venture aimed at trading in goods or services on a market or earning profits.

5. Certain clauses confer incidental financial and property-related powers, such as accepting donations, issuing appeals for funds, borrowing or raising monies with or without security, investing funds, acquiring and holding property, and selling or leasing immovable property with the prior approval of the Central Government. These are standard enabling provisions found in most registered societies and statutory bodies, intended merely to facilitate the functioning of the institution; they are not themselves independent commercial objects.

6. These provisions, cumulatively, demonstrate that CCRAS is a publicly funded, Government-controlled research council created to discharge the State's obligations in the field of traditional medicine research and public

health, and not an autonomous commercial or industrial undertaking seeking profits in a competitive market

7. CCRAS carries out research and allied activities in Ayurveda in furtherance of the Directive Principle under Article 47 of the Constitution, which enjoins the State to raise the level of nutrition and the standard of living and to improve public health. Activities such as evolving standard treatment protocols, studying causation and prevention of diseases, running research institutes and associated clinical units, and providing technical assistance to Government and academic institutions are all in aid of this constitutional mandate.

8. This Hon'ble Court has recognised that not every department or instrumentality of the Government is an "industry" and that departments discharging truly sovereign functions stand outside the scheme of the ID Act, even though they may incidentally employ workmen. In **State of Gujarat v. Pratamsing Narsinh Parmar, (2001) 9 SCC 713**, the Court held that ordinarily a Government department cannot be assumed to be an Industry and that the burden lies on the person asserting otherwise to plead and prove positive facts showing that the establishment in question satisfies the functional tests of "industry".

9. CCRAS is not engaged in commercial manufacture or sale of Ayurvedic drugs or health services as a business venture; it undertakes research, training and public health-oriented clinical work in Ayurveda, publishes and disseminates knowledge, and provides technical assistance primarily to Government and public institutions. Powers to undertake R&D consultancy projects or transfer patents to industry, as contained in some clauses of the Memorandum, are ancillary pathways to ensure that research reaches end-users and does not in themselves convert the Council into a trading or manufacturing concern.

10. To treat a constitutional public health research agency as an "industry" merely because it employs scientists, doctors and support staff, would be to apply the Bangalore Water formula in the very manner that Coir Board has found

problematic – i.e. equating "every organization which does useful service and employs people" with an industry.

11. In **Physical Research Laboratory v. K.G. Sharma, (1997) 4 SCC 257**, this Hon'ble Court examined whether PRL, an institution under the Government of India's Department of Space, was an "industry". PRL was engaged in pure research in space science to acquire knowledge about the formation and evolution of the universe and the atmosphere, and it employed scientists and supporting staff to carry out this research.

12. The Court noted that the Labour Court had found that PRL's research work was not connected with production, supply or distribution of material goods or services, that the purpose of research was to acquire knowledge not intended for sale, that the results were occasionally published but never sold, and that there was no material to show that the knowledge acquired was marketable or had commercial value. On these facts, the Court held that PRL was "more an institution discharging governmental functions and a domestic enterprise than a commercial enterprise.

13. This Hon'ble Court therefore concluded that PRL was not an "industry" even though it carried on systematic research with the help of employees, because it lacked the element that would make it analogous to trade or business – namely, the production and distribution of services intended to satisfy human wants and needs, as ordinarily understood in the context of the ID Act. The Court thus introduced a crucial qualification to the Bangalore Water approach by re-emphasising the economic–functional character of "industry".

14. The status of CCRAS is similar. Its core mission is research and public health advancement in Ayurveda for the benefit of the State and society; it does not maintain production lines for commercial sale of services or goods to consumers or industries in a competitive market. The Division Bench erred in downplaying PRL by seizing upon some incidental financial powers in the Memorandum and by presuming, without evidentiary basis, that CCRAS's research outputs are marketable services.

V. Proper Test: Economic–Functional, Not Merely Organisational.

1. Systematic activity and employer–employee co-operation are necessary but not sufficient; there must also be an economic– functional character analogous to business or trade in the sense of producing or distributing goods or services for ordinary human wants.

2. Bodies whose primary purpose is research, education, or public welfare, and whose outputs are not marketed or intended for sale, lack this necessary economic character even if they incidentally generate or could generate assets or know-how capable of commercial use.

3. Sovereign or public health functions, especially when discharged by entities tightly integrated into Governmental structures, financed by public grants, and subject to public service rules, should be outside the ID Act's industrial scheme.

4. To bring CCRAS within "industry" would be to obliterate any meaningful boundary between industrial and non-industrial State functions and to subject vast swathes of the research and academic infrastructure to the ID Act's industrial dispute machinery, contrary to legislative intent.

VI. <u>SUBMISSIONS</u>

1. THE BANGALORE WATER JUDGMENT RATIO NOT DEFINITIVE AND CONCLUSIVE

1.1. It is respectfully submitted that the ratio of the Bangalore judgment defining the contours of the term "industry" under the Act, is provisional in nature.

1.2. This is evident from the fact that the very inception of the wherein in paragraph 2 of J. Krishna Iyer's opinion itself, it is stated that:

….

1.3. Furthermore, the very reference to the bench of seven Hon'ble judges in Bangalore water supply states that the same is necessitated on account of inaction on the part of the legislature and that till such action, it is for this Hon'ble Court to provide clarity on the definition of industry under the Act from the "day to day disputes involving this branch of law" and "give guidance" thereof. The said reference as quoted in the judgment is as under:

> *"One should have thought that an activist Parliament by taking quick policy decisions and by resorting to amendatory processes would have simplified, clarified and de-limited the definition of "industry", and, if we may add "workman". Had this been done with aware and alert speed by the Legislature, litigation which is the besetting sin of industrial life could well have been avoided by a considerable degree. That consummation may perhaps happen on a distant day, but this Court has to decide from day to day disputes involving this branch of industrial law and give guidance by declaring what is an industry, through the process of interpretation and re-interpretation, with a murky accumulation of case-law.*
>
> *... If in the meantime the Parliament does not act, this Court may have to illumine the twilight area of law and help the industrial community carry on smoothly."*

1.4. The above forms the essence of the entire judgment culminating into the judgment's concluding remarks which contain a rider that it is the Legislature which must intervene to decisively do away with the obscurity in relation to the definition of "industry".

> *"145. We conclude with diffidence because Parliament, which has the commitment to the political nation to legislate promptly in vital areas like industry and trade and articulate the welfare expectations in the 'conscience' portion of the Constitution, has hardly intervened to restructure the rather clumsy, vaporous and tall-and-dwarf definition or tidy up the scheme although judicial thesis and antithesis, disclosed in the two-decades-long decisions, should have produced a legislative synthesis becoming of a welfare State and socialistic society, in a world setting where ILO norms are advancing and India needs updating."*

1.5. Therefore, from the above it is clear, that the *Bangalore Water Supply* cannot be treated as watertight structure incapable of moulding as is

sought to be suggest by the Hon'ble Constitution Bench by *Jai Bir Singh* and referred to this Hon'ble Bench.

2. LEGISLATURE ACTED IN TERMS OF THE JUDGMENT

2.1. In continuation of the above, as is a matter of record, the definition of "industry" was amended by the Parliament in the year 1982 but has not been brought into force till date.

2.2. The sole reason cited by the Union of India in not enforcing the said amended provision is that for the category of industries excluded in the amended definition no Alternative Industrial Disputes Resolution Forums could be created as recorded. This stand was taken in the case of *Aeltemesh Rein v. Union of India* wherein a direction was sought to enforce the amended provisions as enacted by the Legislature.

2.3. In light of the above, it is respectfully submitted that the as far as the judgment in *Bangalore Water Supply* is concerned, the same has served its objective viz. to provide a common thread to diverse interpretations of the industrial law at the time stemmed in the then existing definition of "industry".

2.4. The other objective served by *Bangalore Water Supply* is to prompt the legislature – the proper authority to do so – to fill in the lacunae by amending the relevant provisions of the Act which has been done way back in the year 1982 but not enforced owing executive inaction.

2.5. Despite the above, it is submitted that the definition of "industry" is still frozen in the wide amplitude supplied to it more than four decades having miserably fallen behind the exponential progress made in economic and consequently, industrial sphere.

2.6. Therefore, it is submitted that as far the aspect of judicial review is concerned, this Hon'ble Bench has the mandate to revise the outline of

"industry" not only by virtue of the judgment being revisited i.e. *Bangalore Water Supply* but also by the compelling need of the hour.

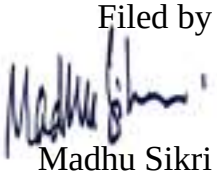
3. DISSENTING OPINION SPECIFICALLY EXCLUDED RESEARCH INSTITUTIONS

3.1. It is submitted that the dissenting opinion in the *Bangalore Water Supply* by HMJ Jaswant Singh, for a himself and HMJ Tulzapurkar clearly states as under:

> *"185…we are of the view that despite the width of the definition it could not be the intention of the legislature that categories 2 and 3 of the charities alluded to by our learned Brother Krishna Iyer in his judgment, hospitals run on charitable basis* ***or as a part of the functions of the Government or local bodies like municipalities and educational and research institutions whether run by private entities or by Government*** *and liberal and learned professions like that of doctors, lawyers and teachers, the pursuit of which is dependent upon an individual's own education, intellectual attainments and special g expertise should fall within the pale of the definition. 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."*
>
> ***(emphasis supplied)***

3.2. It is respectfully submitted that the above dissenting opinion, though not binding, has persuasive value for the purpose of the present reference.

Filed by



Madhu Sikri

Advocate on Record for Appellant

(Code No. 372)

Place: New Delhi

Dated: 27.02.2026

PROOF OF SERVICE

Gmail

Sikri Company <sikrico@sikrilaw.com>

Advance service in the matter of CENTRAL COUNCIL FOR RESEARCH IN AYURVEDA AND SIDDHA V. BRIJESH KUMAR SHARMA in (C.A. No. 3119 OF 2011)

1 message

Sikri Company <sikrico@sikrilaw.com> 28 February 2026 at 12:18
To: kljanjani.07@gmail.com, Kshitij Mudgal <kshitijmudgal@gmail.com>

Sir/Ma'am,

This is in reference to the captioned matter filed before the Hon'ble Supreme Court of India.
In the said matter, we are filing an Written Submissions on behalf of the Appellant in the present Civil Appeal (C.A. No. 3119 OF 2011).

It is to inform that the present mail shall be used as a proof of service up on your goodself.

Regards
M/s. Sikri & Company
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Chamber Add:-229, Lawyers Chambers,
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IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO 6114 OF 2001.

IN THE MATTER OF.

EXECUTIVE ENGINEER & ANR **PETITIONERS**

VERSUS

UMAKANT **RESPONDENT**

WRITTEN SUBMISSIONS ON BEHALF OF APPELLANT, STATE OF U P

1 That the abovenoted appeal is arising out of the judgment of the High Court of Judicature at Allahabad (Lucknow Bench) dated 04 08 1999 whereby Hon ble Single Judge has been pleased to confirm the award of the Labour Court holding that the termination of Respondent/Employee s services by the Irrigation Department of the State of U P was illegal being in violation of Section 6(N) of the U P Industrial Disputes Act, 1947 Though the Labour Court did not direct the reinstatement of Respondent employee and granted compunsation only but Hon'ble High Court directed reinstatement placing reliance on the judgment of this Hon'ble in the matter of Lal Mohammad and Ors Vs IRC Co Limited reported in 1999 (1) SCC page 596

2 That the sole question for consideration before this Hon'ble Court in the abovenoted appeal is Whether Department of Irrigation of State of Uttar Pradesh falls within the ambit of definition of Industry as contained in Section 2(j) of the U P Industrial Disputes Act, and whether an industrial dispute can be raised against the said department of State of Uttar Pradesh by its employee under the provision of Industrial Disputes Act?

3 That this Hon'ble Court has already referred this question in regard to Forest and Sericulture Department of the State of U P in Civil appeal No 897 of 2000, State of U P Vs Jaibir Singh (Forest Department) and Civil Appeal No _____ of ___, State of U P Vs Puran Singh (Department of Sericulture) to a larger Bench In this regard, reliance has been plased on the judgment of this Hon'ble Court in the matter of State of Gujarat and Ors Vs Pratam Singh reported in 2001 (9) SCC page 713 wherein this Hon'ble Court has taken the view that ordinarily a Government Department cannot be regarded as an industry in the absence of any assertion to this effect

4 That detailed written submissions have already been filed in both the abovenoted appeals and the same would be referred and relied to support the plea of the State Government in this appeal that the Department of Irrigation is also a department of State Government and not an industry as defined under Section 2(j) of Industrial Disputes Act and all its employee are governed by separate set of rules as framed under Article 309 of the Constitution of India

5 That in the matter of Deshraj Vs State of Punjab and Ors reported in 1980 (2) SCC page 537 this Hon'ble Court has held that Department of Irrigation of State of Punjab is an industry while placing reliance on seven Judges Bench decision of this Hon'ble Court in the matter of Banglore Water Supply and Sewerage Board Vs A Rajappa 1978 (2) SCC 213 In the said case a Bench of two Judges while considering the law on the question of ambit and scope of the definition of Industry as defined under Section 2(j) of the Industrial Disputes Act reviewed all the previous judgment of this Court and noticing that since proposed amendment of the definition of Industry by Section 2(c) of the amending Act 46 of 1982 has not been brought into force, hence it followed the old definition in the light of various decisions rendered by this Hon'ble Court right from 1960 onwards

6 That in the case of Desh Raj Vs State of Punjab the judgment of Full Bench of High Court of Punjab was under challenge where, in the opinion of the said Full Bench the activities of the Irrigation Department have been dealt in great detail and after considering the same the Full Bench held as follows -

"In this view of the matter, I hold that the functions of the Irrigation Department are essentially government functions and that these functions neither partakes of the nature of trade and business nor are even remotely analogous thereto and that this department does not come within the ambit of industry as defined in Section 2(j) of the Act "

7 That while considering the findings of the Full Bench this Hon'ble Court also noticed some other judgments of the other High Courts where Irrigation Department has been held to be an industry basing that decision on Banglore Water Supply case and held that as per dominant nature test evolved therein the Department of Irrigation is clearly an industry

8 That two other Division Benches of this Hon'ble High Court while taking contrary view in the matter of Executive Engineer, State of Karnataka Vs Somasetty 1997 (5) SCC 434 held that Irrigation Department is not an industry Similarly in the matter of Union of India Vs Jainarain Singh reported in 1995 Suppl 4 SCC page 672 Central Ground Water Board was held not to be an industry In Sub Divisional Inspector of Post, Vaikam and Ors Vs Theyyam Joseph and Ors 1996 (8) SCC page 489 another Division Bench of this Hon'ble Court dealing with the nature of sovereign functions held that Postal Department is not an industry

9 That once again in the case of Bombay Telephone Canteen Employees Association Prabha Devi, Telephone Exchange Vs Union of India 1997 (6) SCC page 723 this Hon'ble Court again reviewed all the previous decisions dealing with the question involved herein including Banglore Water Supply case and came to the conclusion that the said Department (Telephone) is not an industry

10 That the submissions on behalf of State of U P in the abovenoted appeal would be to re-examine the true intent, meaning, and scope of the observations of the Hon'ble Judges with regard to dominant nature test and which are the Constitutional functions, duties and obligations of the Government which could be exempted from the purview of the Industrial Act Infact the reading the opinion of seven Hon'ble Judges in Banglore Water Supply case does reflect the intention to exclude those activities

and functions of the Government which it must perform by virtue of being a constitutionally constituted Government of State being regal or sovereign functions of the State Therefore, the submissions on behalf of State of U P is that providing irrigation facilities to the farmers of the State or the Co intry is certainly not any kind of commercial activity but its sovereign functions Such duties and obligations which are cast upon the government are clearly pursuant to constitutional mandate under the provisions of the Constitution, particularly the directive principles of State policy as contained in Part IV of the Constitution In other words it is urged that various duties cast upon the State Government under the Directive Principles of State policy are to be treated as sovereign functions of the State and not a commercial activity Therefore the Department of Irrigation need to be excluded from the meaning and scope of the expression industry in the Industrial Disputes Act

11 In support of the aforesaid submissions reliance will also be placed on the following decisions of this Hon'ble Court -

(a) 1994 (6) SCC page 205, N Nagendra Rao & Co Vs State of A P

(b) 1996 (2) SCC 293, Chief Conservator of Forest and Another Vs Jaggnath Maruti Kondhre

(c) 2001 (9) SCC 713, State of Gujarat and Ors Vs Pratham Singh Nargish Parsmar

FILED BY -

(KAMLENDRA MISRA)
Advocate-On-Record for
State of U P

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HON'BLE THE CHIEF JUSTICE OF INDIA

HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6108 OF 2002

IN THE MATTER OF: -

CONSERVATOR OF FORESTS
SEED & RES. & ORS. ...APPELLANTS

VERSUS

SRI KUBER SINGH MANRAL ...RESPONDENT

PAPER-BOOK

INDEX

ADVOCATE FOR THE APPELLANT: PRAMOD DAYAL

C. A. NO. 6108 OF 2002

Conservator of Forests Seed & Res. & Ors.

Vs.

Sri Kuber Singh Manral

SYNOPSIS OF SUBMISSIONS

(on behalf of the State of UP)

(a) Brief Relevant Facts

That the Respondent herein was engaged as daily wager muster roll employee on the vacancy caused by retirement of some regular draftsmen in the Department of Forest (Forest Silvi Culturist Sal Region, Haldwani, now in the State of Uttaranchal) to meet the exigency of the work. He continued to work as daily wager with effect from 06.07.1988 to 05.05.1990 and his services automatically came to an end when, a regular draftsmen of the Department joined at the place on which he was working as daily wager. Under Section 4(a) of the UP Industrial Disputes Act, the following industrial dispute was wrongly referred to the Industrial Tribunal.

> "Whether termination of services of Shir Kuber Singh Manral, S/o Shri Bhoopal Singh Manral Draftsman w.e.f. 5.5.1990 is legal and valid and if not then what relief the respondent is entitled for and with what details?

The aforesaid industrial dispute became the subject matter of an award dated 21.02.1995 in ID No. 4 of 1993 passed by the Presiding Officer, Industrial Tribunal, UP, Lucknow. The Industrial Tribunal held that prior to removal from the Service, the Respondent had worked for more than

240 days in a calendar year. The Industrial Tribunal held that the employer institute provides service while using labour and capital and therefore, it will fall within the definition of 'industry'. The Industrial Tribunal further held that the employee has succeeded in establishing that provisions of Section 6N of the UP Industrial Disputes Act, 1947 were violated. The Industrial Tribunal consequently, directed that the termination of services of the Respondent was not proper or legal and that he is entitled for reinstatement and back-wages.

The aforesaid dated 21.02.1995 was challenged by the Appellant by way of filing a Writ Petition before the Hon'ble High Court being Writ Petition No. 2300 of 1995 before the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow. The said Writ Petition was dismissed by the Hon'ble High Court vide its Judgment and Order dated 07.12.1999. The Hon'ble High Court in its impugned Judgment held that the labour court was right in holding that the forest department was an industry and the provisions of Section 6N of the UP Industrial Disputes Act were applicable in the present case. Hence, the Hon'ble High Court dismissed the Writ Petition.

(b) Points arising for decision

(i) Whether the Silvi Culture Division under Forest Department of State Government falls within the expression 'industry' as defined in the Industrial Disputes Act, 1947.

(ii) Whether an industrial dispute under the Industrial Disputes Act, 1947 can be raised against a Department of the State Government?

(c) Pleas sought to be urged

(i) That the Silvi Culture Division under Forest Department of State Government is not covered by the expression 'industry' in the Industrial Disputes Act, 1947.

(ii) That the Industrial Tribunal has no jurisdiction to adjudicate upon a dispute between an employee (seasonal or otherwise) and Department of State Government and that such a dispute is not an industrial dispute.

(d) List of authorities relied on

Citations given in the enclosed Synopsis of Submission

Filed by

Pramod Dayal
Advocate on Record for Appellant

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C. A. NO. 6108 OF 2002

Conservator of Forests Seed & Res. & Ors.

Vs.

Sri Kuber Singh Manral

SYNOPSIS OF SUBMISSIONS

(on behalf of the State of UP)

1.1. Statutory definitions:

(i) The Industrial Disputes Act, 1947

S. 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.

(ii) The Industrial Disputes Act, 1947 as amended by the Amending Act No. 46 of 1982 (but yet to be enforced):

S. 2(j) "industry" means any systematic activity carried on by co-operation 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

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(ii) such activity is carried on with a motive to make any gain or profit,

and includes –

---

butt does not include –

(1) .....

(2) .....

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

(4) institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) .....

(6) any activity of the Government relatable to the sovereign functions of the Government including .....

.....

2.1 The question arising for decision in the present case as regards the meaning and scope of 'industry' in the Industrial Disputes Act, 1947 (ID Act) came up for consideration before a Constitution Bench of 7 Hon'ble Judges in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa (1978) 2 SCC 213. The precise question as to whether functions discharged by a government are 'industry' or not was sought to be answered in para 143 as follows: -

"143. The dominant nature test:

"(a).....

(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).....

(d).....

2.2 Accordingly, what needs to be unraveled in the present case is the true intent, meaning and scope of the aforequoted observation in the 7 Judge decision.

2.3 It is submitted that the true intent, meaning and scope of the aforequoted observation that the 'constitutional' functions (constitutional duties and obligations of the government) are exempt from the coverage of ID Act. This is explained below.

2.4 The true intention of the Hon'ble Court in the aforesaid observation was to exclude those activities and functions of the government which the government must perform by virtue of being the constitutionally constituted government of the State. These activities and functions include not only such obvious matters such as defence of the country, diplomatic relations, maintenance of law and order etc. but also such duties and obligations which are cast upon the government as a constitutional mandate under the provisions of the Constitution, particularly the Directive Principles of State Policy in Part IV of the Constitution.

2.5. The reference to the 'sovereign functions' in the aforequoted observations in the Bangalore Water Supply case is not to be interpreted in the sense of the functions of a sovereign king or monarch. The

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intention behind the use of the expression 'sovereign function' was to exclude from the ambit and scope of 'industry' those functions as are required to be performed by any government operating in the country as compulsory, mandatory and obligatory functions under the provisions of the Constitution itself. These functions are not undertaken by any government out of choice and no government has the right or freedom to avoid or neglect or disregard the performance of such functions. Conversely speaking, every government by virtue of the very fact that it is the government of the State, has no other option but to undertake all such functions which are mandated upon it by the Directive Principles of State Policy.

2.6 In other words, the various duties cast upon the State under the Directive Principles of State Policy are to be treated as no different from 'sovereign functions'. As such they need to be excluded from the meaning and scope of the expression 'industry' in the ID Act.

2.7 The fact that the concept of 'sovereign functions' is an elastic and flexible concept even in the present context of the ID Act is clear from the principle enunciated by a three Judge Bench of this Hon'ble Court in the case of Chief Conservator of Forest Vs. Jagannath Narut Kondhare (1996) 2 SCC 293. In the said case, the Court first mentioned in para 8 the functions which are described as 'sovereign functions' in the classical sense as being 'legislative power, the administration of laws, the exercise of the judicial power' and then moved on to say in para 10 "that apart from the aforesaid three functions, there may be some other functions also regarding which a view could be taken that the same too is a sovereign function". Their Lordships approved a decision of the

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Gujarat High Court in the case of JJ Shrimali Vs. Distt. Development Officer (1989) 1 Guj. LR 396 wherein the undertaking of famine and drought relief works by the State Government was held to be not an "industry".

3.1 However, although the principle underlying the concept of the sovereign functions was rightly explained and amplified by the Hon'ble court in the aforesaid Judgment, CCF Vs. J. Maruti Kondhare, it is submitted that the said principle was not correctly applied to the facts of the case for answering the question whether social forestry work done by the government is an 'industry' covered by the ID Act.

3.2 It is submitted that the work of forestry or social forestry is a mandatory duty and function to be discharged by the government under the Directive Principles contained in Art. 48-A of the Constitution.

> Art. 48A Protection and improvement of environment and safeguarding of forests and wild life.
>
> The State shall endeavor to protect and improve the environment and to safeguard the forest and wild life of the country.

This Hon'ble Court has time and again directed State Government to abide by the aforesaid constitutional duty.

M. C. Mehta Vs. Kamal Nath	(1997) 1 SCC 388
T. N. Godavarman Vs. UOI	(1997) 2 SCC 440
T. N. Godavarman Vs. UOI	(1997) 2 SCC 267
M. C.Mehta Vs. UOI	(2004) 6 SCC 588

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3.3 In other words, any activity or function which is performed by the Government in due discharge of its constitutional functions and obligations should stand excluded from the meaning and scope of the expression 'industry'. This needs to be done irrespective of its label or description being that of 'sovereign functions', state functions', 'governmental functions' or 'welfare activity of the state'. The underlying rational and principle behind the exclusion is to immunize the State from any challenge or claim under the ID Act in respect of the 'constitutional functions' discharged by it.

3.4 There is no special charm in the use of expression 'sovereign functions'. The said expression actually signifies the 'constitutional functions' of the State.

3.5 The intention of the Constitution Bench in the aforequoted dictum in Bangalore Water Supply case has been only to grant immunity to the State in respect of its constitutional projects and enterprises as opposed to any commercial project or enterprise. If the State indulges in a purely commercial project or enterprise, the same may well be treated to be an 'industry' just like a private individual. But a project or enterprise undertaken by the State in pursuance of its constitutional obligation (for instance, social forestry or afforestation) would not be treated as 'industry' merely because a private individual may also indulge in such a project or enterprise. Once again, it may be noted that when the State undertakes the said project, it does so out of compulsion in recognition of and for the due discharge of its constitutional obligations whereas a private individual does so merely out of a personal choice.

4.1 Applying the aforesaid principle it is submitted that the Judgment of three Hon'ble Judges in the case of CCF Vs. J. Maruti Kondhare insofar as it holds the work of social forestry under Forest Department of the State Government to be 'industry' is wholly erroneous and contrary to law, it deserves to be overruled. On the other hand the Judgment of this Hon'ble Court in the case of State of Gujrat Vs. Pratamsingh Narsinh Parmar (2001) 9 SCC 713 is correct and legal and deserves to be approved.

4.2 The three Judge Judgment in CCF Vs. J. Maruti Kondare has gone contrary to the letter and sprit of the Constitution Bench Judgment in the Bangalore Water Supply case. For that reason also it deserves to be overruled.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 897 OF 2002

IN THE MATTER OF: -

State of Uttar Pradesh ...Appellant

Versus

Jai Bir Singh ...Respondent

AND
CIVIL APPEAL NO. 6471 OF 2002

IN THE MATTER OF:-

The State of Maharashtra and Anr. ...Appellants

Versus

Serva Shramik Sangh ...Respondent

WRITTEN SUBMISSIONS OF MR. SHEKHAR NAPHADE, SENIOR ADVOCATE, ON BEHALF OF STATE OF MAHARASHTRA

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ADVOCATE FOR APPELLANT : AADITYA A. PANDE
Filed on: 09.03.2026

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 897 OF 2002

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Sarva Sharamik Sangh ...Respondent

WRITTEN SUBMISSIONS OF MR. SHEKHAR NAPHADE, SENIOR ADVOCATE, ON BEHALF OF STATE OF MAHARASHTRA

I. Locus of State of Maharashtra

1. In the above matter and the connected matters, the Hon'ble Chief Justice has constituted a bench of Nine Hon'ble Judges for deciding the question as to what is the true meaning of the word "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (ID Act). This reference to the larger bench is in the context of the judgment of this Hon'ble Court in the case of *Bangalore Water Supply (1978) 2 SCC 213*. The said judgment was delivered by a bench consisting of seven Hon'ble Judges. Hence, the present reference.
2. The State of Maharashtra is directly and substantially interested in the subject matter of the present reference before the bench of

nine Hon'ble Judges. The State of Maharashtra is the appellant in Civil Appeal No. 647/2002.This appeal arises out of the order passed by the Bombay High Court dated 21/07/2002 in Writ Petition No. 264/1996.The said Writ Petition No. 264/1996 was filed by the State of Maharashtra to challenge the order dated 14/07/1992 of the Industrial Court, Maharashtra in Complaint (ULP)No. 270/1987 The said complaint was filed by Sarva Sharamik Sangh, on behalf of the employees of the forest department of theState of Maharashtra under provision of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The said Act applies to industry as defined in section 2(j) of the ID Act. The Industrial Court, by its order dated 14/07/1992, held that the Forest Department had committed unfair labour practices.Against the said order, the State of Maharashtra filed the aforesaid writ petition, which was dismissed by order dated 21/07/2002. Thereafter, the Special Leave petition filed by the State was admitted and leave to appeal was granted. Thus,the State of Maharashtra is appellant in the Civil Appeal No. 647/2002. in the said appeal the State of Maharashtra wants to contend that the activities of the Forest Department do not fall within the ambit of definition of "industry" as contained in section 2(j) of ID Act. Hence, the State of Maharashtra's locus in participating in the present reference.

II. What should be the approach of this Hon'ble Court?

i. It is respectfully submitted that all the issues relating to the interpretation of definition of "industry" as contained in section 2(j)

of the ID Act should be open for fresh consideration by this Hon'ble Court without any constraints on account of the propositions enunciated in previous judgments.

2. The judicial pronouncements on the subject are not consistent. The time has now come to judicially settle the issue as to what activity constitutes an industry as defined in section 2(j) of the ID Act. In order to achieve this objective, it is very necessary for this Hon'ble Court to formulate a litmus test to identify as to which activity constitutes industry and which activity does not. Such a test must be based on logic and reason.

3. It is respectfully submitted that the fault line that pervades all previous judgments is that there is no detailed analysis of the meaning of the words used in the definition of industry contained in the ID Act. Consequently, there is no logical test for deciding the question as to what is "industry".

III. Triple Test

1. The Bangalore Water Supply judgment formulated the triple test for the purpose of interpreting the definition of "industry".The triple test has three ingredients:where there is (i) Systematic activity, (ii) organized by co-operation between employer and employee, and (iii) for the production and distribution of goods and services. After formulating the test, court carved out exceptions. The sovereign regal functions of the state are outside the scope of the definition. Religious activities do not fall within the ambit of the definition. The courts have erroneously assumed that the triple test is implicit within the wording of the definition. If this is a correct approach, then exceptions to the triple test must also

logically flow from the wording of the definition. There is nothing in the wording of the definition which would sustain such an approach. The triple test does not explain the basis for the aforesaid exceptions.

2. The triple test is a judicial invention and is not based on the wording of the definition contained in the statute. The carving out of exceptions is neither based on the text of the statute nor on any principle of logic. It is judicially imported into the statute. The exceptions are not even based on the triple test itself. The following illustrations show how the triple test falters on the altar of logic and reason.

3.1 The administration of justice by the courts, tribunals, and other judicial authorities involves the rendering of service to the litigants. The triple test is satisfied even in respect of the administration of justice, as it is a systematic activity organized by the cooperation between the employer (government or court) and the employees (the staff working in the court, tribunal, and other judicial authorities) and it results in rendering a service to the litigants.

3.2. The Police force maintains law and order and protects the life and property of citizens. This activity satisfies the triple test, as it is a systematic activity, organized by the cooperation between the employer (government) and the employees (Police personnel) and it results in rendering service to the society and citizens.

4 The triple test theory excludes the aforesaid sovereign functions from the purview of the definition of "industry".This exclusion is

without any logical basis. If triple test is to be followed, then there is no reason for excluding the sovereign functions of the State.

5. It is respectfully submitted that the triple test propounded in the Bangalore Water Supply case should be rejected as it is not based on the wording of the statute and it has no logical base. The triple test does not give effect to the plain meaning of the words deployed in section 2(j) of the ID Act

IV. Economic Criteria

1. The question now is how to interpret the definition of industry contained in section 2(j) of the ID Act. The definition reads as follows:

   "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.

2. The definition has two parts. The first part refers to the activity of the employer. The second part of the definition refers to the activities of the employees. The activities of the employees must necessarily relate to the activity of the employer. In other words, the first part of the definition specifies the activities of the employer which constitute an industry and the second part of the definition tells us that the employees work in carry out such activities. The second part of the definition does not extend the scope of the definition. The essence of the definition is in the first part of the definition itself. The second part is not an independent factor. A combined reading of the two parts of the definition leads

as to the conclusion that the employer carries on industry wherein the employees work.

3. The words "business", "trade" and "manufacture" used in the definition of industry carry within their womb economic/ commercial activity. The dictionary meaning of the word "calling" is occupation or trade (see Oxford, Webster, Collins etc.). The word "calling" has an economic content. The world "calling" also has spiritual connotation, but it is obviously not used in that sense. The word "undertaking" is wedged between the words "business" and "trade" on one hand and words "manufacture" and "calling" on the other hand. Therefore, the word "undertaking" takes its colour from the other words, namely, business, trade, manufacture and calling. Even the word "calling" itself takes its colour from the other words. Thus, all the words used in the definition are cognate expressions and have economic roots. The principle of *noscitur a sociis and ejusdem generis* is clearly attracted. Each word used in the definition conveys a sense of organized economic activity. The dominant content of the definition of industry is organized economic activity. This furnishes the litmus test to decide as to what constitutes industry.

4. The economic criteria test furnishes a definitive parameter to decide whether a particular activity falls within the definition of "industry" or not. Sovereign function of the State are not predominantly economic activity and therefore do not fall within the definition of "industry". By the same logic, purely religious activities are not economic activities and therefore they do not fall within the ambit of "industry". The Forest Department is primarily

and predominantly engaged in preserving, protecting, and developing the forest areas of the State. This is an important statutory function which is required to be carried out under the provision of Forest Act, 1927, the Forest (Conservation) Act, 1980, the Maharashtra Private Forest (Acquisition) Act, 1975, and other allied statutes. While discharging the aforesaid statutory function, the Forest Department also deals with the forest produce, however, this is incidental to its main duties and functions. Although dealing with forest produce involves an economic element, it is not of decisive significance as it is incidental to the Forest Department discharging its essential statutory function

5. Assuming that the triple test propounded in Bangalore Water Supply still holds good, even then the Forest Department activities would still fall outside the purview of the definition of "industry". The statutory functions discharged by the Forest Department are not only essential governmental functions but are also essential sovereign functions which private entities cannot discharge. The preservation of forests is directly linked to a healthy environment and the maintenance of ecological balance. Hence it is an inalienable functions of the State.

Filed by:

Date: 09.03.2026

(Aaditya A. Pande)
Advocate for Appellant
The State of Maharashtra

HON'BLE MR. JUSTICE ARUN KUMAR

ADARSH KUMAR GOEL

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2506 OF 2002

IN THE MATTER OF: -

STATE OF UP ...APPELLANT

VERSUS

BHUVNESHWAR DAYAL TYAGI ...RESPONDENT

PAPER-BOOK

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ADVOCATE FOR THE APPELLANT: PRAMOD DAYAL

C. A. NO.2506OF 2002

State of UP Vs. Bhuveneshwar Dayal Tyagi

SYNOPSIS OF SUBMISSIONS

(on behalf of the State of UP)

(a) Brief Relevant Facts

The Respondent worked from time to time on daily wages as a tractor cleaner in the Social Forestry Division (Department of Forest), Ghaziabad, UP. His case was that he commenced working with the Department in the year 1990. His further case was that he was transferred orally to work and he had worked from 15.08.1993 to 17.09.1995 and that when on 18.09.1995, he went to join his duty, he was informed that his services were not required any more. According to him this type of termination falls within the definition of 'retrenchment' as defined in the UP Industrial Disputes Act, 1947. It was his case that he had worked for more than 240 days in the preceding 12 months of his termination and therefore, it was incumbent upon the employer to give him benefit of Section 6N of the said Act. Vide an Order dated 05.03.1997 an Industrial Dispute was referred to the Labour Court referring the matter to the effect whether the termination of services of the labourer Shri Bhuvneshwar Dayal Tyagi, S/o Shri Jaganath Singh w.e.f. 18.09.1995 by the employer is proper and legal? If not, what is the benefit/relief, which the labourer concerned is entitled to get and of what description and from which date?

The aforesaid referred dispute was the subject matter of dispute No. 69 of 1997 before the Presiding Officer, Labour Court, UP, Meerut. The same was decided vide an Award dated 27.04.2000. The Labour Court

on the question as to whether the Department of Social Forestry is an industry or not? held that the Labour Court is not barred from hearing the Industrial Dispute. In other words, the Labour Court held that the Department of Social Forestry is an Industry. The Labour Court passed the Award by holding that the termination of the service of the Respondent w.e.f. 19.09.1995 was not maintainable. The Labour Court granted continuity of service together with back-wages @ 40%. The Appellant State filed Civil Misc. Writ Petition No. 5595 of 2001 before the Hon'ble High Court against the award of Labour Court contending that the Forest Department of State Govt. is not an industry. The Hon'ble High Court vide its Judgment and Order dated 15.02.2001 dismissed the Writ Petition.

(b) Points arising for decision

(i) Whether Social Forestry Division under Forest Department of State Government falls within the expression 'industry' as defined in the Industrial Disputes Act, 1947.

(ii) Whether an industrial dispute under the Industrial Disputes Act, 1947 can be raised against a Department of the State Government?

(c) Pleas sought to be urged

(i) That the Social Forestry Division under Forest Department of State Government is not covered by the expression 'industry' in the Industrial Disputes Act, 1947.

(ii) That the Industrial Tribunal has no jurisdiction to adjudicate upon a dispute between an employee (seasonal or otherwise) and Department of State Government and that such a dispute is not an industrial dispute.

(d) List of authorities relied on

Citations given in the enclosed Synopsis of Submission

Filed by

Pramod Dayal
Advocate on Record for Appellant

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C. A. NO.2506 OF 2002

State of UP Vs. Bhuveneshwar Dayal Tyagi

SYNOPSIS OF SUBMISSIONS

(on behalf of the State of UP)

1.1. Statutory definitions:

(i) The Industrial Disputes Act, 1947

S. 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.

(ii) The Industrial Disputes Act, 1947 as amended by the Amending Act No. 46 of 1982 (but yet to be enforced):

S. 2(j) "industry" means any systematic activity carried on by co-operation 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 –

---

butt does not include –

(1) .....

(2) .....

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

(4) institutions owned or managed by organizations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) .....

(6) any activity of the Government relatable to the sovereign functions of the Government including .....

.....

2.1 The question arising for decision in the present case as regards the meaning and scope of 'industry' in the Industrial Disputes Act, 1947 (ID Act) came up for consideration before a Constitution Bench of 7 Hon'ble Judges in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa (1978) 2 SCC 213. The precise question as to whether functions discharged by a government are 'industry' or not was sought to be answered in para 143 as follows: -

"143. The dominant nature test:

"(a).....

(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).....

(d).....

2.2 Accordingly, what needs to be unraveled in the present case is the true intent, meaning and scope of the aforequoted observation in the 7 Judge decision.

2.3 It is submitted that the true intent, meaning and scope of the aforequoted observation that the 'constitutional' functions (constitutional duties and obligations of the government) are exempt from the coverage of ID Act. This is explained below.

2.4 The true intention of the Hon'ble Court in the aforesaid observation was to exclude those activities and functions of the government which the government must perform by virtue of being the constitutionally constituted government of the State. These activities and functions include not only such obvious matters such as defence of the country, diplomatic relations, maintenance of law and order etc. but also such duties and obligations which are cast upon the government as a constitutional mandate under the provisions of the Constitution, particularly the Directive Principles of State Policy in Part IV of the Constitution.

2.5. The reference to the 'sovereign functions' in the aforequoted observations in the Bangalore Water Supply case is not to be interpreted in the sense of the functions of a sovereign king or monarch. The intention behind the use of the expression 'sovereign function' was to exclude from the ambit and scope of 'industry' those functions as are required to be performed by any government operating in the country as compulsory, mandatory and obligatory functions under the provisions of the Constitution itself. These functions are not undertaken by any

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government out of choice and no government has the right or freedom to avoid or neglect or disregard the performance of such functions. Conversely speaking, every government by virtue of the very fact that it is the government of the State, has no other option but to undertake all such functions which are mandated upon it by the Directive Principles of State Policy.

2.6 In other words, the various duties cast upon the State under the Directive Principles of State Policy are to be treated as no different from 'sovereign functions'. As such they need to be excluded from the meaning and scope of the expression 'industry' in the ID Act.

2.7 The fact that the concept of 'sovereign functions' is an elastic and flexible concept even in the present context of the ID Act is clear from the principle enunciated by a three Judge Bench of this Hon'ble Court in the case of Chief Conservator of Forest Vs. Jagannath Narut Kondhare (1996) 2 SCC 293. In the said case, the Court first mentioned in para 8 the functions which are described as 'sovereign functions' in the classical sense as being 'legislative power, the administration of laws, the exercise of the judicial power' and then moved on to say in para 10 "that apart from the aforesaid three functions, there may be some other functions also regarding which a view could be taken that the same too is a sovereign function". Their Lordships approved a decision of the Gujarat High Court in the case of JJ Shrimali Vs. Distt. Development Officer (1989) 1 Guj. LR 396 wherein the undertaking of famine and drought relief works by the State Government was held to be not an "industry".

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3.1 However, although the principle underlying the concept of the sovereign functions was rightly explained and amplified by the Hon'ble court in the aforesaid Judgment, CCF Vs. J. Maruti Kondhare, it is submitted that the said principle was not correctly applied to the facts of the case for answering the question whether social forestry work done by the government is an 'industry' covered by the ID Act.

3.2 It is submitted that the work of forestry or social forestry is a mandatory duty and function to be discharged by the government under the Directive Principles contained in Art. 48-A of the Constitution.

> Art. 48A Protection and improvement of environment and safeguarding of forests and wild life.
>
> The State shall endeavor to protect and improve the environment and to safeguard the forest and wild life of the country.

This Hon'ble Court has time and again directed State Government to abide by the aforesaid constitutional duty.

M. C. Mehta Vs. Kamal Nath	(1997) 1 SCC 388
T. N. Godavarman Vs. UOI	(1997) 2 SCC 440
T. N. Godavarman Vs. UOI	(1997) 2 SCC 267
M. C.Mehta Vs. UOI	(2004) 6 SCC 588

3.3 In other words, any activity or function which is performed by the Government in due discharge of its constitutional functions and obligations should stand excluded from the meaning and scope of the expression 'industry'. This needs to be done irrespective of its label or

description being that of 'sovereign functions', state functions', 'governmental functions' or 'welfare activity of the state'. The underlying rational and principle behind the exclusion is to immunize the State from any challenge or claim under the ID Act in respect of the 'constitutional functions' discharged by it.

3.4 There is no special charm in the use of expression 'sovereign functions'. The said expression actually signifies the 'constitutional functions' of the State.

3.5 The intention of the Constitution Bench in the aforequoted dictum in Bangalore Water Supply case has been only to grant immunity to the State in respect of its constitutional projects and enterprises as opposed to any commercial project or enterprise. If the State indulges in a purely commercial project or enterprise, the same may well be treated to be an 'industry' just like a private individual. But a project or enterprise undertaken by the State in pursuance of its constitutional obligation (for instance, social forestry or afforestation) would not be treated as 'industry' merely because a private individual may also indulge in such a project or enterprise. Once again, it may be noted that when the State undertakes the said project, it does so out of compulsion in recognition of and for the due discharge of its constitutional obligations whereas a private individual does so merely out of a personal choice.

4.1 Applying the aforesaid principle it is submitted that the Judgment of three Hon'ble Judges in the case of CCF Vs. J. Maruti Kondhare insofar as it holds the work of social forestry under Forest Department of the State Government to be 'industry' is wholly erroneous and contrary to law, it

deserves to be overruled. On the other hand the Judgment of this Hon'ble Court in the case of State of Gujrat Vs. Pratamsingh Narsinh Parmar (2001) 9 SCC 713 is correct and legal and deserves to be approved.

4.2 The three Judge Judgment in CCF Vs. J. Maruti Kondare has gone contrary to the letter and sprit of the Constitution Bench Judgment in the Bangalore Water Supply case. For that reason also it deserves to be overruled.

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)
CIVIL APPEAL NO.8597 OF 2001

IN THE MATTER OF:

Ram Ji Singh & Ors. ...Appellants

Versus

State of U.P. & Others ...Respondents

WRITTEN SUBMISSION ON BEHALF OF THE STATE OF UTTAR PRADESH BY SHRI DINESH DWIVEDI SENIOR ADVOCATE

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ADVOCATE FOR THE STATE OF U.P: Mr. ARDHENDUMAULI KUMAR PRASAD

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)
CIVIL APPEAL NO 8597 OF 2001

IN THE MATTER OF

Ram Ji Singh & Ors — Appellants
Versus
State of U P & Others — Respondents

WRITTEN SUBMISSION ON BEHALF OF THE STATE OF UTTAR PRADESH BY SHRI DINESH DWIVEDI SENIOR ADVOCATE.

1 The question posed is whether reference to larger bench for reconsideration of *Bangalore Water supplies* case is valid ?
The paragraph 46 of the reference order [2005 (5) SCC 1] refers the case to Honble Chief Justice and is binding on Chief Justice
Following factors are relevant -

a The case has been required to be placed before the Hon'ble Chief Justice
b It is a reference under Article 145(3) as the principles apply (Para 23-24) and [2005 (2) SCC 673 Para 12-13]
c The reference order is binding on the Hon'ble Chief Justice infact constitution of Seven Judges was not required as it would be in conflict with the wishes of the Constitution Bench order of reference order (Supra) contained in Paras 23-25 and Para 146
d The reference order adequately gives cogent reasons of conflicting views contained in the judgment of *Bangalore Water Supply* (Para18-22,24-25,31-33,38-40,43-44)

2 The reference order clearly shows the following reasons for reference -

a The Judgment of the Chief Justice Beg cannot be taken as concurring judgment as it is based on conclusions that appears to be half baked (Para 11 of reference order) There is total non consideration of case law and the opinion appears to be hastily given

b These are various inconsistencies in the four separate opinions on all major issues -

- None of the opinion have tried to place charities, education, hospital or municipalities as trade, business or manufacture They all rely upon the word "undertaking" to expand the term "industry" under section 2(J)
- The test of "undertaking" is organized activity which is "analogous" to trade, business, manufacture or calling of employer An enterprise in order to be called "undertaking" in the definition of "Industries" under section 2 (J) of Industrial Dispute Act 1947 has to satisfy this test Yet the life blood of the activity, its commercial nature is detached and ignored A University, Municipality, Hospital and department are not commercial enterprise of an employer
- The difference in four opinions on "Sovereign functions" has also been carefully summed up
- Stark differences in the opinion on the issue of absence of profit motive and charity are indicated

The reference order clearly earmarks the inconsistent stands on all the above issues with a firm conclusion in Para 23-25 of the reference order, that the four opinions are not unanimous and vary in material particulars The two opinions of Chandrachud J and Jaswant Singh J (also

representing Tulzapurkar J) are those which were never seen by the other four Hon'ble Judges These Hon'ble Judges had merely agreed that the appeal of *Bangalore Water Supply* case should be dismissed but no definite area of concurrence or difference was indicated to the opinion of K Aiyar J (para 13 of reference order) Thus what we see is that only three Hon'ble Judges Concurred when the judgment was delivered

It cannot be ignored that *Bangalore Water Supply* seeks to overrule the unanimous opinion of six Hon'ble Judges in (1970 (1) SCC 735 (*Safdarjung Hospital case*)

3 Apart from the above we have also endeavoured to catalogue the various inconsistencies in a synopsized form as well as the elaborate statement tagged with this revised written submission, on the above three issues The same are annexed as Annexure- I and II

4 Apart from the above there are two more important issues -

a Whether 1982 amendment in the Industrial Disputes Act which clearly seeks to override *Bangalore Water Supply* case is a "law made" and therefore can be relied upon as an tool of interpretation for interpreting word "industry" in section 2 (J) of Industrial Disputes Act 1947?

2012 (7) SCC 108 Para 5, 24,31,41-42,49-51, 56-57,61,62,65,97

1977 (1) SCC 199 Para 2,6,9,10

1998 (7) SCC 228 Para 1,6,13

b Whether 1982 amendment in the Central Industrial Disputes Act 1947, which is a "law made" under Article 254 of the Constitution, would modify the applicable law, Uttar Pradesh Industrial Disputes Act 1947, under Article 254 (2),being subsequent law made by the Parliament on a concurrent entry 22 (list III)?

2012(7) SCC 108

Filed by

(ARDHENDUMAULI KUMAR PRASAD)

ANNEXURE:I

BRIEF SYNOPSIS

C A NO 8597/2001

Ramji Singh & Ors — Appellants

VS

State of U P & ORS — Respondents

1 There is not unanimity in regard to sovereign function-

- **K. Aiyar J.** – Excludes inalienable sovereign functions only like legislation, justice, administration, war etc (Paras 37,40,50, 143)
- **Beg CJ**- (Paras 163-4,169)
  - Opinion hurried
  - Claimed that there is nothing like sovereign function It is "governmental function", which has wider connotation and can also include welfare functions as visualized by part IV and Article 243 of the constitution
- **Chandruchud J.** - (Para 179) expands "Industry", to include even inalienable sovereign functions also
- **Jaswant Singh J.** - (Para 185) excludes all governmental functions, including welfare functions

2 Whether Profit motive excluded and therefore all charities included

- **K.Aiyar J.** - (Paras 38,54,102-105,140) divided charity in three categories but included 3rd category in charity, where the workers, even though they are employed on wages yet,are employed to sub-serve a mission and work with passion for philanthropy The exclusion of third category, conflicts with the point of absence of profit motive, being irrelevant If profit motive is irrelevant then no philanthropy is exempt, particularly keeping in view the functional test of

organized systematic activity where employer and employee cooperates to produce goods and services and workers are employed for wages

- **Chandrachud J.** - appears to expand "undertaking" to include all charities (Para 150)
- **Jaswant Singh J.** excludes charities whether by private or public authority (Para 185)

3 There is a series difference on the issue of functional test

- **K.Aiyar J.** - (Paras 36-8,43,52,63) Test of organized systematic activity analogous to trade, business and manufacture has been accepted to read down the word "undertaking", yet the commercial aspect has been ignored It is accepted that "trade or business or manufacture has eyes on competitive efficiency for obtaining money worth but in the final analysis ignores this important aspect of the commercial enterprise test
- **Chandrachud J.** - applies the same test but completely ignores the commercial or economic character of trade and business (Para 179-80)
- **Jaswant Singh J** Rely on restricting "Undertaking" co commercial lines (Para 185) as in the case of trade, business or manufacture

Earlier orders in *Safdarjung Hospital* case relied upon the commercial aspect of trade or business and held that the "analogous" test must have definite economic content (1970) 1 SCC 735,

- Same opinion is constructed in following cases-
- AIR (1968) SC 554 (Madras Gymkhana)
- (1964) 2 SCR 703 (University of Delhi)
- (1975) 4 SCC 621 (Dhanraj Giri Hospital)

ANNEXURE:II

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

C A NO 8597/2001

IN THE MATTER OF :

Ramji Singh & Ors — Appellants

VS

State of U P & ORS — Respondents

WRITTEN SUBMISSION ON BEHALF OF THE STATE OF U.P. BY SHRI DINESH DWIVEDI, SENIOR ADVOCATE.

INCONSISTENCIES IN JUDGMENT OF BANGLORE WATER SUPPLY

1 Industrial Disputes Act purports to provide for dispute settlement machinery to establish peace and order on the Industrial front so that productive activity may go on It also confers valuable rights upon both workers and employers with respect to closure, lock out, lay off, retrenchments on the one hand, and illegal strikes and prohibition of strikes (Section 22-25, 26-29 Industrial Disputes Act), on the other hand In Schedule 5 it prescribes a set of unfair labour practice for both employers and workmen This apart all industry is run by the Co-operation and collaboration of capital and labour and its smooth running is in the interest of both, and primarily the nation Therefore, exposition of the term "industry" ought not to overly tilt in favour of workmen The interpretative approach in Bangalore Water Supply & Sewerage Board case

attempts to expand the ambit with only working class in view (Pr 3,12,18)

2 While Justice Krishna Iyer applies the rule of noscitur a sociis (Pr 13) , Beg C J rules out the applicability of this principle (Pr 158) and so also Chandrachud, C J (Pr 173, 177) But the partly dissenting 2 Judges while accepting applicability of this principle (Pr 185) apply it differently as compared to Justice Krishna Iyer The dissenting Judges include the commercial characteristic of business, trade and manufacture while limiting the definition of industry by analogy (Pr 185) Justice Krishna Iyer applies it haltingly, hesitatingly and restrictively with solely worker in focus and excludes the commercial characteristic

3 Justice Krishna Iyer relies on observations from Bannerjee's case (Pr 26-30) in the Judgment of Chandrashekhar Iyer J while advocating a wider interpretation, though the said observations are based on rejection of the applicability of principles of noscitur-a-sociis Nagpur case also rejects it (Pr 9)

4 While refusing to apply noscitur a sociis principle, Gajendragadbar J in Hospital M Sabha case sought to introduce some limitations "in a fair and just manner" as "reasonably implied" in Sec 2(j) and used the analogous test minus profits with focus on activity (Pr 12,14,17) , Subbarao J tried to restrict by reference to the aim, scope and object of whole Act and the agreed basis of exclusion of the regal or sovereign function (Pr 9 to 11) K I, J on the other, hand provides a wider expansion to "industry" even while adopting noscitur a sociis principle Justice Krishna Iyer rejects the "fair and just manner " test (Pr 72)

5 Justice Krishna Iyer rejects profits and motive as a relevant criteria but leans on the very same idea of profit and motive while dealing with Ashrams and Orders of gurus, free legal or medical

service (Pr. 110) (Pr. 142(c). However, he rejects the same thesis of selfless service vis-à-vis Panjrapole (Pr. 111).

6. Even while clearly stating that court was not concerned in , Bangalore Water Supply & Sewerage Board with departments of government charged with essential constitutional functions and a closer exploration would be needed, Justice Krishna Iyer while dealing with Hospitals run by government, proceeds to lay down that only primary and inalienable sovereign functions are excluded from industry. {Pr. 40,50, 143(b)}. Beg, C.J. clearly expresses his unhappiness with the expression "sovereign" and would use the term "governmental" functions and he does not adopt the "primary and inalienable" test but refers to services covered by separate rules and Constitutional provisions such as Article 310-311 for exclusion (Pr. 163). Chandrachud, C.J. rejects the sovereign function test from another extreme and says that it is in conflict with the activity test. (Pr. 176). The two dissenting judges exclude all government functions (Pr. 185). Thus, so far as government departments are concerned there is no discernable majority ratio and complete deadlock or statemate exists. However qua Department of Social Forestry, this Court has in CCF Vs. Jagannath Kondhare followedthe minority logic of inalienable functions . But in State of Gujarat Vs. Pratam Singh this court said ordinarily a department of government is not an industry.

7. In the Judgment of Justice Krishna Iyer there is no criterion specified for determining or identifying which functions are "primary and inalienable". He describes some functions differently in Pr. 37, 50 and 143(b). Per specifications in Pr. 37 the list is not exhaustive. The expression has been lifted from minority judgment of Isface and Rich JJ in Union of Australia Vs. Melbourne Corporation (1918-19) 26 CLR ; at 530-31 which talks of delegation of Crown function of administration of justice to Municipality and the some being inalienable and not "industry". However, he approves Nagpur case holding that tax department of local body being integrated in

industry even though assessment functions of judicial nature are involved (Pr. 65). Thus this test is vague and most functions of the government are alienable in the sense of delegation and some incidental or supplemental outsourcings are also possible without destroying the predominant character Justice Krishna Iyer himself adopts the predominant character test (Pr. 64, 68).

8. Justice Krishna Iyer includes even some employees assisting in sovereign functions, unless they are engaged and supportively employed in the discharge of Constitutional Government. (Pr. 50). Thus for those working in gardens or driving cars even the courts and legislatures may be industry. The fallacy lies in Judging the status of institutions based on nature of work of employee. Interestingly the learned judge himself rejects that approach qua University . (Pr. 95-96).

9. Beg C.J. says that if industrial dispute could arise the area would be industry or that the nature of activity would be determined by the conditions which give size to such disputes (Pr. 162). Justice Krishna Iyer also errs in some what identical manner. Even while adopting the predominant nature of activity test, he includes University as a number of ancillary activities may be industry and large number of employees would be deprived of the benefits of the Act (Pr. 96).

10. The crucial aspect is that whether one goes by Keynesian economics or Marxian the seeking of return, surplus or not, is the core aspect of trade, business or manufacture. The history also shows that the Industrial Disputes Act intended to provide a settlement or adjudication machinery for industrial development and to safeguard the interests of workers and employers. The backdrop was workers struggles in factories. There is nothing in Section 2(j) to rule out the "seeking of return" as relevant criterion. The principles of noscitur a sociis and the test of analogy to trade, business or manufacture necessarily implies the commercial or

economic idea of return In fact the entire workers struggle is about a better share in return Many benefits of workmen like fair or living wage, increments and more than minimum bonus are dependent on profits Therefore, the analogous test must be applied with full force and amplitude The whole exercise in various cases to find a rational basis for limiting the wide width of "industry", upon the words being taken separately, arose on account of rejection of the idea of return, and each time the court relapsed into subjectivism though setting itself on guard against it

11 A question also arises if the , Bangalore Water Supply & Sewerage Board judgment meets the requirement of collective consideration and adjudication when Beg CJ says he was retiring and had no time to reflect fully and discuss cases in the way he would have liked to and 3 other judges delivered their judgments after 44 days and Justice Krishna Iyer & Beg C J had no opportunity to see the other Judgments

12 In Coir Board case doubt was expressed by a 2 JJ Bench but a 3 JJ Bench refused to consider on grounds of Amendment Act 1982 being passed and 2 JJ Bench being bound by 7 JJ Judgment The reasoning of referring order was not discussed

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IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

C.A. NO. 8597/2001

IN THE MATTER OF :

Ramji Singh & Ors. ..... Appellants

VS.

State of U.P. & ORS. ..... Respondents

WRITTEN SUBMISSION ON BEHALF OF THE PETITIONERS/ STATE OF U.P. BY DINESH DWIVEDI, SENIOR ADVOCATE.

INCONSISTENCIES IN JUDGMENT OF BANGLORE WATER SUPPLY

1. Industrial Disputes Act purports to provide for dispute settlement machinery to establish peace and order on the Industrial front so that productive activity may go on. It also confers valuable rights upon both workers and employers with respect to closure, lock out, lay off, retrenchments on the one hand, and illegal strikes and prohibition of strikes (Section 22-25, 26-29 Industrial Disputes Act), on the other hand. In Schedule 5 it prescribes a set of unfair labour practice for both employers and workmen. This apart all industry is run by the Co-operation and collaboration of capital and labour and its smooth running is in the interest of both, and primarily the nation. Therefore, exposition of the term "industry" ought not to overly tilt in favour of workmen. The interpretative approach in Bangalore Water

Supply & Sewerage Board case attempts to expand the ambit with only working class in view. (Pr. 3,12,18)

2. While Justice Krishna Iyer applies the rule of noscitur a sociis (Pr. 13) , Beg C.J. rules out the applicability of this principle (Pr. 158) and so also Chandrachud, C.J. (Pr. 173, 177). But the partly dissenting 2 Judges while accepting applicability of this principle (Pr. 185) apply it differently as compared to Justice Krishna Iyer. The dissenting Judges include the commercial characteristic of business, trade and manufacture while limiting the definition of industry by analogy. (Pr. 185). Justice Krishna Iyer applies it haltingly, hesitatingly and restrictively with solely worker in focus and excludes the commercial characteristic.

3. Justice Krishna Iyer relies on observations from Bannerjee's case (Pr. 26-30) in the Judgment of Chandrashekhar Iyer J while advocating a wider interpretation, though the said observations are based on rejection of the applicability of principles of noscitur-a-sociis. Nagpur case also rejects it. (Pr. 9)

4. While refusing to apply noscitur a sociis principle, Gajendragadbar J. in Hospital M.Sabha case sought to introduce some limitations "in a fair and just manner" as "reasonably implied" in Sec. 2(j) and used the analogous test minus profits with focus on activity (Pr. 12,14,17) , Subbarao J. tried to restrict by reference to the aim, scope and object of whole Act and the agreed basis of exclusion of the regal or sovereign function (Pr. 9

to 11). K.I, J. on the other, hand provides a wider expansion to "industry" even while adopting noscitur a sociis principle. Justice Krishna Iyer rejects the "fair and just manner " test (Pr. 72).

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"industry", upon the words being taken separately, arose on account of rejection of the idea of return, and each time the court relapsed into subjectivism though setting itself on guard against it.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

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

BRIEF WRITTEN SUBMISSIONS

ON BEHALF OF STATE OF KARNATAKA

1. The Hon'ble High Court of Karnataka, in the matters, by placing reliance on the judgment of a Bench of seven judges of this court in the case of *Bangalore Water Supply & Sewerege Board etc. v. A. Rajappa & Ors. (1978) 2 SCC 213* has held the Forest Department and Engineering Department of Zilla Panchayat to be 'industry' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. Now a nine judges' bench of this Hon'ble Court is considering the definition of 'industry' as defined in Section 2(j) of the Industrial Disputes Act, 1947, the following brief submissions are being made.

2. It is respectfully submitted that the expansive interpretation placed on the definition of 'industry' by eliminating the purpose of an activity as earning of profits or income or returns, many activities like that of a department of the Government,

have been brought into the sweep of an industry. In fact, by considering the term 'undertaking' in this fashion, all kinds of organised activities which would ordinarily not have been considered as industries at all and which would not have been otherwise considered as industries even under the Industrial Disputes Act were now 'industries' under the Industrial Disputes Act.

3. It is respectfully submitted that the language of the definition of ‘industry’ in the Industrial Disputes Act and the word ‘undertaking’ appearing along with the words ‘trade, business and manufacture or calling’, by applying the principle of noscitur a sociis, an ‘undertaking’ would cover activities similar to trade, business, manufacture of goods or calling and no other kinds of activity.

4. It is respectfully submitted that the first and second parts of the definition are not to be read in isolation as if they were different industries but only as aspects of the occupation of employers and employees in an industry. They are two counterparts in one industry. In its first part, the definition of ‘industry’ means any business, trade, undertaking, manufacture or calling of employers. This part of the definition determines an industry by reference to occupation of employers in respect of certain activities. The second part views the matter from the angle of employees and is designed to include something more in what the term primarily denotes. By the second part of the definition, any calling, service, employment, handicraft or industrial occupation or avocation of workmen is included in the concept of an industry. This part

gives is susceptible to extended connotation. However, the word 'undertaking' must be defined as any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade, otherwise every activity irrespective of whether it is an industry in its etymological meaning will be covered by the definition of ‘industry’ under the Act.

5. It is respectfully submitted that every activity which involves the relationship of an employer and employee is not necessarily an industry and that in an industry co-operation between employers and employees must result in production and distribution of material goods or material services, to come with the definition of ‘industry’.

6. It is respectfully submitted that there must be an enterprise or activity in which the employers follow their avocation as detailed in the definition and employ workmen who follow one of the avocations detailed for workmen. But every case of employment is not necessarily productive of an industry. For example, service in a government department may disclose relationship of employers and employees but they cannot be regarded as in the course of industry. To qualify 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.

7. In 1982, the Parliament intervened and substituted the definition of ‘industry’ under the Industrial Disputes Act, 1947 by enacting the Amending Act 46 of 1982, by including within

its meaning some activities of the government and excluding some other specified governmental activities and ‘public utility services’ involving sovereign functions. However, the amended definition has not been enforced and issuance of notification as required by Sub-section 2 of Sub-section 1 of Amendment Act, 1982 has been withheld so far.

8. Therefore, it is respectfully submitted that since a nine judges’ bench of this Hon’ble Court is considering the contours of the definition of ‘industry’ under the Industrial Disputes Act, 1947, a pragmatic approach may kindly be adopted by balancing the welfare of workmen as also to ensure that the application of the Industrial Disputes Act to organisations which were not intended by the legislature to be so covered by the legal regime set up under the Industrial Disputes Act.

9. In the present case, the function of the Forest Department or the Engineering Department is to discharge the functions mandated by the Constitution of India to be performed by the State. It is not established to run any industry itself. Looking to the predominant purpose of which it is established, it cannot be called an industry. However, if one were to apply the tests laid down by Bangalore Water Supply and Sewerage Board case, it is an organisation where there are employers and employees. The function of the Forest Department or the Engineering Department is only to discharge sovereign functions, viewed from that perspective, the departments cannot be termed as industry within the meaning of the definition of ‘industry’ under the Act. The organisation does useful work for the benefits of others.

10. Therefore, it is respectfully submitted that in interpreting the definition of ‘industry’ the doctrine of noscitur-a-sociis oght to be applied. An activity or an undertaking will come within the definition of ‘industry’, if the activity or undertaking is analogous to trade or business in a commercial sense.

(V.N.Raghupathy)

(D.L.Chidananda)

Advocates On Record for State of Karnataka

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
IN THE
Special Leave Petition (Civil) No. 20982 of 2004

IN THE MATTER OF:

WORKMEN REPRESENTED THROUGH
THE SECRETARY, ANUSANDHAN & FIRM
MAZDOOR UNION, HAZARIBAH ...PETITIONER

VERSUS

CENTRAL RAINFED UPLAND,
RICE RESEARCH STATION,
HAZARIBAGH ...RESPONDENT

SYNOPSIS ON BEHALF OF THE RESPONDENT TO ORDER DATED 27.07.2004 AND 04.10.2002 OF THIS HON'BLE COURT

(MRS.MADHU SIKRI)
ADVOCATE FOR THE RESPONDENT
229, LAWYERS CHAMER,
HIGH COURT OF DELHI,
NEW DELHI

Filed on: 3.11.2004
Place: New Delhi

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICITON
CIVIL APPEAL NO. 20982/2002

IN THE MATTER OF:

WORKMEN REPRESENTED THROUGH
THE SECRETARY, ANUSANDHAN & FIRM
MAZDOOR UNION, HAZARIBAH ...PETITIONER

VERSUS

CENTRAL RAINFED UPLAND,
RICE RESEARCH STATION,
HAZARIBAGH ...RESPONDENT

SYNOPSIS ON BEHALF OF THE RESPONDENT

1. BRIEF RELEVANT FACTS

(A) That the workmen through the Petitioner Union raised an industrial dispute and accordingly the appropriate government referred the said dispute to the Central Government Industrial Tribunal No. 2 at Dhanbad for adjudication vide order No. L.4201/11/89-IR (DU) dated 25.7.1990.

(B) That on 14.9.1990, the petitioner Union filed a claim before the Central Government Industrial Tribunal No.2, a Dhanbad for regularization of 81 workers. However, there was neither any specific pleading nor evidence led by the petitioner Union that the workers worked for 240 days in a year preceding to their alleged termination. It is pertinent to note that the petitioner Union neither pleaded nor led nor any evidence to prove that the respondent institute is an 'Industry' within the meaning of Section 2(J) of the Industrial Disputes Act, 1947. In reply to the claim of the petitioner Union, the Respondent contended and specifically denied that the "the farm is not utilizing the crop of its product for commercial purpose but its product is sent through the Agricultural Department, Govt. of Bihar, for

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distribution to the agriculturists. The respondent further denied that the work is of perennial nature.

(C) That before CGIT No.2, Dhanbad, Respondent raised a specific plea that it is not an 'industry'. Moreover, the petitioners never led any evidence to prove that the respondent is an 'industry'. The Ld. CGIT No.2, Dhanbad, came to the conclusion that the respondent is an industry relying upon the judgment of this Hon'ble Court in Bangalore Water Supply & Sewerage Board Vs. A. Nachappa, 1978, (2) SCC 213 and dispute was disposed off with directions:-

> *"The management is directed to form a Committee consisting of 3 senior officers to prepare a list of persons required permanently through out the year, and the Committee will submit the report within 3 months from the date of publication of this award failing which the management will regularize all the concerned workmen as permanent employees".*

(D) ON 21.1.1998, the Hon'ble High Court of Judicature at Patna, Ranchi Bench, remanded the dispute back to the CGIT No.2, Dhanbad after setting aside the implementing portion of the award.

(E) On 12.7.1999, the Successor Presiding Officer of the CGIT No. 2 held that all the concerned workmen of this reference are entitled to an order for their regularization despite the fact that the respondent cannot be called an 'industry' within the meaning of Section 2(J) of the I.D. Act, 1947.

(F) The Hon'ble Single Judge of the High Court set aside the award dated 26.6.1995, read with award dated 12.7.1999, on the ground that the respondent cannot be said to be an industry as defined under Section 2(J) of the I.D. Act, 1947. The Hon'ble Single Judge further held that the petitioner Union never pleaded that the Respondent Research Institute is engaged in any activity which can be called business, trade or manufacture.

(G) On 3.7.2002, the Division Bench of the Hon'ble High Court of Jharkhand at Ranchi, upheld the decision of the Ld. Single Judge.

2. THE POINTS ARISING FOR DECISION

(A) That whether the respondent organization which is a sub-station of Central Rice Research Institute under the aegis of Indian Council of Agricultural Research and have been specifically mandated by the Government of India:

i. to develop suitable technologies to increase in the rice productivity and sustainability through applied and strategic research and disseminate them.

ii. To collect, maintain and evaluate upland rice germ plasm.

iii. To characterize unpland rice situations and develop mixed and sequence cropping,

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And, hence, none of whose activity is commercial, industrial or economic can be called 'industry' within the meaning of Section 2(J) of the Industrial Disputes Act, 1947.

B. Whether the Respondent Organization, which is sub-station of the Central Rice Research Institute and specific mandates of the Central Rice Research Institute are as follows:

i. To conduct basic and strategic research on rice to improve the production per unit area per unit time under different environmental condition, more specifically the rainfed upland conditions.

ii. To develop knowledge and technologies for optimum management of rain water, fertilizer and organic matter for rice production under rainfed conditions.

iii. To develop practices for integrated pest and disease management

iv. To collect, maintain, evaluate rice garmplasm and supply it to research worker in the country to meet their research requirement.

v. To distribute improved plant material to different national research centres.

vi. To maintain complete information on rice environment in the country and carry out research on physical, biological,

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social and economic constraints in rice production under different environmental situations and measures needed for their removal.

vii. To impart training to the rice research worker in different areas of rice research.

And, hence, none of whose activity is commercial, industrial or economic can be called 'industry' within the meaning of Section 2(J) of the Industrial Disputes Act, 1947.

(C) The Article 48 of the Constitution cast an obligation on the state as follows:

> *"The state shall endeavour to organise agricultural and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle."*

In view of the above mandate of the constitution, whether the research activities undertaken by the respondent organization can be called as Sovereign Function of State and hence excluded from the scope of Section 2(J) of the Industrial Disputes Act, 1947.

3. **POINTS SOUGHT TO BE URGED.**

(A) That the research activities undertaken by the respondent organization by no stretch of imagination can be called "business", "trade", or "manufacture" hence not an industry within the definition 2(J) of I.D. Act, 1947.

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(B) The respondent organization is not engaged in any commercial or industrial activity and it cannot be described as an economic venture or commercial enterprise because it is not its object to produce and distribute services which would satisfy the wants and needs of the consumer community. In nutshell, the activities of the respondent organization can be called sovereign function of the state.

4. LIST OF AUTHORITIES RELIED ON

The respondent relies upon the judgment of this Hon'ble Court in the case of Physical Research Laboratory vs. K.G. Sharma, 1997 (4) SCC 257, wherein, this Hon'ble Court held that an institute like Physical Research Laboratory, which is engaged in pure research in space science cannot be set to be an undertaking analogous to business or trade. The Hon'ble Court future held that :

"It is not engaged in a commercial industrial activity and it cannot be described as an economic venture or a commercial enterprise as if it is not its object to produce and distribute services which would satisfy wants and needs of the consumer community. It is more an institution discharging Governmental functions and a domestic enterprise than a commercial enterprise. We are, therefore, of the opinion that PRL is not an industry even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks that element which would make it an organisation

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carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs, as ordinarily understood."

FILED BY

Madhu Sikri

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NEW DELHI
DATED: 3/11/04

Brief submissions by Mr. T.R. Andhyarujina, Senior Counsel in Civil Appeal No. 355-358 of 2003, National Remote Sensing Agency vs. H. Sunder and others.

It is submitted that this Bench of 5 judges may refer the correctness of Bangalore Water Supply case 1978 2SCC 213 for re-consideration by a larger bench.

All the 4 judgments in Bangalore Water Supply case have expressed diffidence in the result of the interpretation given by the Court of the definition of "industry", and themselves stated that the it is only Parliament which can give clear a definition and solve the problem. The relevant portions are:-

Krishna Iyer J at page 228 p.2 (last line) and page 284 para 145.

Beg CJ pages 284-285 and page 292 para 168

Chandrachud CJ page 294 175 and page 298 para 181 last part.

Jaswant Singh and Tulzapurkar J.J. page 300 para 186/7

Krishna Iyer J speaking for the majority states "We speak not exhaustively but to the extent covered by the debate at the bar and, to that extent authoritatively, until overruled by a larger

bench or superceded by the legislative branch (page 282 para 139)

As the limitation of noscitur a sociis and the concept of "analogous to trade and business" was rejected, in view of the ambiguous nature of the definition and its wide sweep Gajendrajadkar J. in State of Bombay vs. Hospital Mazdoor Sabha 1962 SCR 866 at 876 stated that "a line would have be drawn in a fair and just manner so as to exclude some calling services or undertakings".

Subsequent cases after Hospital Mazdoor Sabha drew the line of exclusion in some cases viz. Solicitor's case 1962 Supp. 3 SCR 157, University of Delhi 1964 2SCR 703, Madras Gymkhana case 1968 1 SCR 742, Cricket Club of India's case 1969 1 SCR 600 etc and by 6 judges in Safdarjung Hospital case 1971- 1SCR 177: 1970 1 SCC 735, but the majority judgments in Bangalore Water Supply did not approve of any exclusions and overruled them (see Krishna Iyer J. page 254 para 72 and page 281 paragraph 138).

On the invitation of the all judges of the Court in Bangalore Water Case, Parliament enacted a new definition of industry by the Industrial Disputes Amendment Act, 1982 (Act No. 46 of 1982) which drew the lines and excluded certain activities from the scope of industry in Section 2 (c) of that Act.

Almost all sections of the Amendment Act of 1982 were brought into operation by the Central Government w.e.f. 21.08.1984, except Clause 2 (c). For over 23 years, this definition has not been notified by the Central Government even though Parliament on the invitation of the Court has clarified the uncertainties in the scope of the definition of industry.

In Union of India vs. Shree Gajanan 2002 5 SCC 44 the Central Government gave certain reasons for not notifying Section 2 (c) as yet. These reasons are unpersuasive. The Executive branch of the Government cannot in effect decide not to implement the will of Parliament See R vs. Home Secretary ex-parte Fire Brigade Union 1995 2 All ER 244 (House of Lords), and Statutory Interpretation by Benion 3rd Ed at page 208.

In Coir Board Case 1998 2 SCC 259 page 269 (para 29) a bench of two judges of this Court held that "Looking to the uncertainty prevailing in this area and in the light of the experience of two decades in applying the test laid down in the case of Bangalore Water Supply, it is necessary that the decision should be re-examined.

The reference to a larger bench was refused in Coir Board II 2000 (1) SCC 224 summarily, inter alia on the ground that the law had been amended pursuant to Bangalore Water Supply case, and that a bench of two judges were bound by the judgment of a larger bench.

This bench of 5 judges is however, competent to make a reference to a larger bench.

It is submitted that in view of Government's inability and/or refusal to implement Section 2 (c) of the Industrial Disputes Amendment Act 1982, this Court may now refer the correctness of Bangalore Water Supply to a larger bench.

STATUTORY INTERPRETATION

A Code

Third Edition

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1997

to areas where a day later than royal assent had been appointed before royal assent. Did the words look to an appointment after assent, or merely to a date after assent (the appointment having been made before)? The court formed the impression that the Government had desired the Act to come into effect as soon as possible. *Held* The literal meaning was plain. Although, in the case before the court, the Act could without inconvenience to anyone have come into force on the forthcoming date appointed before assent had been given to the Act, it was decreed that commencement must be postponed to the date fixed by the next appointment in a year's time.[1]

Date otherwise described There is no limit to the ways in which Parliament may choose to fix the time of commencement, although in modern practice the tendency is not to employ unusual methods. A date may be indicated by implication.[2]

Repeal before commencement Where a future date is specified by the Act for its commencement, it is open to Parliament to change its mind and repeal the Act or some part of it before the date of commencement arrives. Such repeal need not indeed betoken a change of mind. It is common practice to precede a consolidation Act by an amending Act 'tidying up' the area of law to be consolidated. When the consolidating Act finally comes into force it repeals the amending Act without its ever having become operative.

Example 73.4 The Agricultural Holdings Act 1906 was specified to come into force on 1 January 1909. Before that date it was repealed as to England and consolidated as part of the Agricultural Holdings Act 1908 (repealed).

There may be other reasons for repeal before commencement. One is where an error is discovered.

Example 73.5 Schedule 6 to the Housing Act 1980 contains provisions amending the Rent Act 1977 Sch 11. Before Sch 6 was brought into force, it was found that these provisions were defective. Equivalent provision was therefore made by the Regulated Tenancies (Procedure) Regulations 1980 reg 2 and Sch 1.[3] In the explanatory note to these regulations it was stated that Sch 6 would not now be brought into force.

Retrospective commencement Occasionally it may be considered necessary to give an Act retrospective effect. The position relating to retrospective operation is explained in Code ss 97 to 101.

Section 74. Commencement on date specified by government order

An Act may state that it is to come into force on such date as Her Majesty may by Order in Council appoint, or as a specified Minister may by order made by statutory instrument appoint, or as may be otherwise appointed.

COMMENT

This section describes the position where the whole Act is to be brought into force on one date by government order. Piecemeal commencement orders are dealt with in Code s 75.

Advantages This method of commencement gives all the advantages of extreme flexibility. Before a new Act is brought into operation, any necessary regulations or other instruments which need to be made under it can be drafted. Full consultations can be held with the interests concerned. Explanatory material for the guidance of officials and the public can be prepared and absorbed. Further

1 *Richards v McBride* (1881) 8 QBD 119. The case is also discussed in Example 151.1.
2 *Forbes v Fanshawe* Tr 1784, cited in *Lukes v Holmes* (1792) 4 Term Rep 660 at 661.
3 SI 1980/1696. The regulations were made under the Rent Act 1977 s 74.

consideration can be given to the wisdom of any doubtful provisions and, if necessary, amendments to the Act can be sought from Parliament. The matter is under government control, and the government, paying regard to political factors, can choose the most advantageous moment. These are the reasons which cause the commencement order method to be chosen for a large proportion of modern Acts. Using this method does however carry the risk that the need for a commencement order will be overlooked by the civil servants charged with the duty of administering the Act.[1] Rarely, Parliament may insist on being given an opportunity to consider and, if thought fit, reject a proposed commencement order.

Example 74.1 The Easter Act 1928 s 2(2), which would cause the date of Easter to be fixed instead of variable, prevents a commencement order being made unless a draft of it has first been approved by both Houses of Parliament. No such draft has yet been approved.

Alternatively, Parliament may *specify* the date which, if Ministers decide to make a commencement order, is to be the one appointed.

Example 74.2 Section 9(2) of the Equal Pay Act 1970 gave the Secretary of State discretion to bring certain provisions of the Act into force earlier than the commencement date of 29 December 1975 specified by s 9(1), but stated that the day appointed by such an order must be 31 December 1973.

Choice of date Use of the word 'may' rather than 'shall' in the commencement provision indicates that, although Parliament has thought fit to pass the Act, it has chosen to leave the question of when it shall be brought into operation to Ministers. This recognizes that unexpected factors may arise which make it in the Government's view inexpedient to allow the Act to come into force without some delay. Although this is sometimes criticised as in effect allowing the civil service a suspending power, the remedy lies with Parliament.[2] If it wishes to insist on an Act's coming into force within a certain period, Parliament can always use appropriate wording to achieve this.

Example 74.3 Section 5(2) of the Domestic Violence and Matrimonial Proceedings Act 1976 provided that if any provisions of the Act had not been brought into force by 1 April 1977 'the Lord Chancellor shall then make an order by statutory instrument bringing such provisions into force'.[3]

Decision not to make commencement order Can a government lawfully decide, as a matter of policy, never to bring an Act (or part of an Act) into force at all?[4] Certainly governments do as a matter of fact take such decisions.[4] They can apply only until reversed, and this might always be done by a successor government. So the word 'never' is perhaps inapt; though on some matters there may be all-party agreement that an enactment should in effect be repealed by this form of inaction. The official doctrine on the point was set out by Lord Elwyn-Jones LC in answer to a parliamentary question relating to the failure to bring into force the Road Traffic Act 1974 s 7. ' . . . if the Act states that it shall come into force on a date to be fixed by order made by the Minister, and provides no more than that, it is within the discretion of the Minister as to when he brings the Act into force. Parliament may of course bring pressure to bear on him and require him to justify any inactivity. But short of another Act, there is no way in which the Minister can

1 This has occasionally happened, particularly in colonial territories: see Example 30.3. For some colonial examples see Bennion, *Constitutional Law of Ghana* (1962), p 380.

2 As to the denial of a suspending power see Code s 84.

3 See below in this comment.

4 For examples see N Tutt and H Giller, 'Police Cautioning of Juveniles: the Practice of Diversity' [1983] Crim LR 587 (Children and Young Persons Act 1969 s 5); J R Spencer, 'When is a Law not a Law?' (1981) 131 NLJ 644 (Health and Safety at Work etc Act 1974 s 71). See also Example 73.5.

be compelled *by Parliament* to bring that Act into operation.[1] This statement must be literally true, but it overlooks the possibility that there might be another remedy, namely an application to the High Court for judicial review.[2] A commencement order is a statutory instrument, and judicial review has been allowed in the case of a failure by a Minister to make a statutory instrument, admittedly of a different kind.[3] Two types of case can be distinguished. The first, which is comparatively rare, is where the Act says the Minister *shall* bring the provision into force.[4]

Example 74.4 An example of a mandatory requirement where no date was specified is furnished by the Consumer Credit Act 1974 s 192(4). This says that the Secretary of State 'shall' make orders bringing into operation the amendments and repeals set out in Schs 4 and 5 to the Act.

It is submitted that such mandatory provisions are to be taken to imply that the duty must be performed *within a reasonable time*. Any other reading would enable a Minister to frustrate the clear intention of Parliament, which is contrary to the whole essence of statutory interpretation.[5]

The second type of case is the more usual one, where the permissive 'may' is used. Here again it is submitted that the matter is within the scope of judicial review.[6] Whenever Parliament passes an Act it intends, unless the contrary intention appears, that all its provisions shall be brought into force within a reasonable time, and there is no reason in principle why this matter of public law should be treated as withheld from the supervisory jurisdiction of the High Court.

Example 74.5 This reasoning was followed by the House of Lords in a 1995 judicial review case.[7] Instead of bringing into force the Criminal Justice Act 1988 ss 108 to 117 and Schs 6 and 7, which provided a compensation scheme for crime victims, the Home Secretary introduced a non-statutory scheme made under the royal prerogative and intended to be permanent. The white paper foreshadowing this said that the statutory provisions 'will not now be implemented', adding: 'They will accordingly be repealed when a suitable legislative opportunity occurs'. It was held by a majority of three to two that the Home Secretary's actions were unlawful. He had a duty to keep under consideration from time to time the question whether or not the situation had arrived when it was appropriate to bring the statutory provisions into force, so could not lawfully decide that they would *never* be implemented. Moreover he could not lawfully say that the self-induced circumstance of bringing in the permanent non-statutory scheme had so changed the situation that it would never be appropriate to make commencement orders for the statutory scheme and that it had in effect been frustrated.[8]

See further Code s 57.

1 HL Deb. 29 June 1977 (cc' 1110) (emphasis added). Some 120 Acts passed in the period 1920–1993 had not been fully implemented by 1993: HL Deb, 9 June 1993 col WA 55.

2 As to judicial review see Code s 24.

3 See *R v Secretary of State for the Environment, ex p Greater London Council* (1983) *Times*, 2 December. This case, further referred to below in this comment and also discussed in Example 57.1, is described in Example 294.1.

4 See Example 74.3.

5 In fact the bulk of the amendments and repeals mentioned in Example 74.4 were not brought into force until 19 May 1985: Consumer Credit Act 1974 (Commencement No 8) Order 1985 (SI 1985/1551), arts 4 and 5. Is an interval of nearly eleven years between passing and commencement a 'reasonable period'?

6 A declaration has been granted notwithstanding that some of the regulation-making powers in question were couched in permissive terms: see *R v Secretary of State for the Environment, ex p Greater London Council* (1983) *Times*, 2 December.

7 *R v Secretary of State for the Home Department, ex p Fire Brigades Union* [1995] 1 All ER 588: see also the discussion of the decision in Example 48.2.

8 This echoes the contract law doctrine of self-induced frustration.

Statutory defence It does not seem that the defence under the Statutory Instruments Act 1946 s 3(2) of non-issue of the instrument[1] is available to a person charged with an offence under an Act brought into force by a statutory instrument. It can scarcely be said in such a case that the offence 'consists' of a contravention of the statutory instrument within the meaning of s 3(2)—even though but for the making of the instrument the charge under the Act could not have been brought.

Orders in Council A commencement Order in Council made under an Act is a statutory instrument.[2] Under constitutional convention it is as much under government control as any other type of delegated legislation.[3] Accordingly all commencement orders, including those framed as Orders in Council, are effectively made by Ministers.

Section 75. Commencement of different provisions on different days

An Act may state that its various provisions are to come into force (either wholly or for certain purposes only) on such dates as Her Majesty may by Order in Council appoint, or as a specified Minister may by order made by statutory instrument appoint, or as may be otherwise appointed.

COMMENT

Where power is given to bring an Act into force by order, it is now more usual to provide flexibility by enabling different provisions to be brought into force at different times.[4] Furthermore any one provision may be brought into force at different times for different purposes.[5] Departments are under instructions to minimise the number of commencement orders made for any one Act, and to rationalise their issue and the dates of commencement. The explanatory note to a commencement order should include commencement dates appointed by previous orders made under the Act in question.[6]

Section 76. Preparatory orders etc

Where an Act which (or any provision of which) does not come into force immediately on its passing confers power to make delegated legislation, or to make appointments, give notices, prescribe forms or do any other thing for the purposes of the Act, then, unless the contrary intention appears, the power may be exercised, and any instrument made thereunder may be made so as to come into force, at any time after the passing of the Act so far as may be necessary or expedient for the purpose–

(a) of bringing the Act or any provision of the Act into force; or

(b) of giving full effect to the Act or any such provision at or after the time when it comes into force.

1 See Code s 68.
2 See Code s 61.
3 See Code ss 50 and 52.
4 See *R* v Weston [1910] 1 KB 17.
5 For the detailed effect of such a commencement provision see Code s 74.
6 Instructions issued by the Management and Personnel Office: see *The Law Society's Gazette* 28 July 1982. For explanatory notes see Code s 60.

HON'BLE MR. JUSTICE K. G. BALAKRISHNAN

रजिस्ट्री सं० डी०-(डी)-72 REGD No. D-(D)-72

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 17] नई दिल्ली, शुक्रवार, अप्रैल 23, 1982/वैशाख 3, 1904
No. 17] NEW DELHI, FRIDAY, APRIL 23, 1982/VAISAKHA 3, 1904

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 23rd April, 1982:—

BILL No. 47 OF 1982

A Bill further to amend the Industrial Disputes Act, 1947

BE it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Industrial Disputes (Amendment) Act, 1982.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 2.

14 of 1947.

2. In section 2 of the Industrial Disputes Act, 1947 (hereinafter referred to as the principal Act),—

(a) in clause (a), in sub-clause (i), for the portion beginning with the words "the Industrial Finance Corporation of India" and ending with the words and figures "the Regional Rural Banks Act, 1976", the following shall be substituted, namely:—

21 of 1976.

'a Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948, or the Industrial Finance Corporation of India established under section 3 of the Industrial Finance Corporation Act, 1948, or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948, or the Board of Trustees constituted under section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948, or the Central

STATEMENT OF OBJECTS AND REASONS

The Industrial Disputes Act, 1947, provides the machinery and procedure for the investigation and settlement of industrial disputes. The provisions of the Act had been amended from time to time in the light of experience gained in its actual working, case laws and industrial relations policy of the Government. The National Commission on Labour (1969) which made an in-depth study of the industrial relations and procedures had identified a number of areas in which the Act needed to be amended to promote industrial harmony. The recommendations of the National Commission on Labour were discussed at various forums.

2. The objectives of the Bill are mainly to ensure speedier resolution of industrial disputes by removing procedural delays and to make certain other amendments in the light of some of the recommendations of the National Commission on Labour. The Bill seeks to make the following amendments in the Act, namely:—

(i) Difficulties have arisen in the interpretation of the definition of the expression "appropriate Government" as contained in the Act in respect of certain industrial establishments. It is proposed to remove these difficulties by making the Central Government the appropriate Government in respect of these establishments.

(ii) The Supreme Court in its decision in the Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and others (AIR 1978 SC 548) had, while interpreting the definition of "industry" as contained in the Act, observed that Government might restructure this definition by suitable legislative measures. It is accordingly proposed to redefine the term "industry". While doing so, it is proposed to exclude from the scope of this expression, certain institutions like hospitals and dispensaries, educational, scientific, research or training institutes, institutions engaged in charitable, social and philanthropic services, etc., in view of the need to maintain in such institutions an atmosphere different from that in industrial and commercial undertakings and to meet the special needs of such organisations. It is also proposed to exclude sovereign functions of Government including activities relating to atomic energy, space and defence research from the purview of the term "industry". However, keeping in view the special characteristics of these activities and the fact that their workmen also need protection, it is proposed to have a separate law for the settlement of individual grievances as well as collective disputes in respect of the workmen of these institutions. All these have been taken into account and the term "industry" has been made more specific while making the coverage wider. The scope of the term "workman" has also been enlarged to cover the supervisory staff whose wages do not exceed Rs. 1,600 per month.

(iii) A model grievances redressal procedure had been commended for adoption. But this voluntary arrangement has not proved effective. It is, therefore, proposed to make it obligatory for every industrial establishment employing 100 or more workmen to set up a time bound grievance redressal procedure.

(iv) There has been dissatisfaction with delays involved in the adjudication of industrial disputes. It is proposed to fix a time limit for the adjudication of individual and collective disputes, as also for the disposal of claims, applications and other references by the Labour Court, the Industrial Tribunal or the National Industrial Tribunal with a view to securing speedier justice to workmen. It has also been provided that no case will lapse merely on account of the fact that the time limits specified had expired.

(v) There have been conflicting decisions about the right of legal heirs of a workman in the event of the death of the latter pending proceedings before the authorities under the Act. Provision is being made to make it clear that pending disputes will not abate in the event of the death of the workman.

(vi) It is observed that when Labour Courts pass awards of reinstatement, these are often contested by an employer in the Supreme Court and High Courts. The delay in the implementation of the award causes hardship to the workmen concerned. It is, therefore, proposed to provide for payment of wages last drawn by the workmen concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or the High Courts.

(vii) It is proposed to provide that workmen in mines could be laid-off for reasons of fire, flood, excess of inflammable gas or explosion without previous permission.

(viii) Taking into consideration the observations of the Supreme Court in the Excel Wear case (AIR 1979 SC 25), it is proposed to recast the provisions relating to closure of industrial establishments as contained in the Act to provide for the following, namely:—

(a) The employer will have to apply to Government to obtain permission for closure ninety days before the intended date of closure and a copy of such application will have to be served by him on the representatives of the workmen also;

(b) On receipt of such application, Government after giving a reasonable opportunity of being heard to the applicant and the representatives of the workmen, and after taking into consideration the guidelines laid down in the provision, may grant or refuse to grant the permission asked for. Permission shall be deemed to have been granted if no order of the Government granting or refusing to grant permission is communicated within the specified period;

(c) The order of the Government granting or refusing to grant permission is being made final subject to a review by the Government or a reference to the Industrial Tribunal;

(d) Where an undertaking is permitted to be closed down, the workmen shall be entitled to closure compensation equivalent to fifteen days' average pay for every completed year of continuous service or part thereof in excess of six months.

(ix) The special provisions relating to lay-off, retrenchment and closure as contained in Chapter VB of the Act apply at present to establishments employing 300 workmen or above. With a view

to extending this statutory protection to workmen of smaller establishments also, it is proposed to reduce the existing employment limit from 300 to 100.

(x) There is at present no Central law specifying unfair labour practices on the part of employers, workmen and the trade unions of employers and workmen and for imposing any penalty for resorting to such undesirable practices. Certain State laws as well as voluntary Codes of Discipline laid down by the Indian Labour Conference specify certain practices as unfair labour practices. The National Commission on Labour which examined this aspect in detail suggested a list of such unfair practices. It is proposed to make suitable provision in the Act to specify certain practices as unfair labour practices on the part of employers, workmen and trade unions and to provide for penalties for those indulging in such practices.

3. The Bill seeks to achieve the above objects and to provide for certain other consequential and clarificatory changes in the Act.

NEW DELHI;
The 27th March, 1982

BHAGWAT JHA AZAD.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 812 OF 2005

IN THE MATTER OF:

Superintending Engineer, U. B. D. C. Circle & Ors. **… Petitioners**

Versus

Paramjit Singh (Dead) Thr. Lrs. **… Respondent**

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IN THE SUPREME COURT OF INDIA
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IN THE MATTER OF:

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WRITTEN SUBMISSION ON BEHALF OF MR. SHADAN FARASAT, SENIOR ADVOCATE – ADDITIONAL ADVOCATE GENERAL FOR STATE OF PUNJAB

*"**The life of the law has not been logic: it has been experience**. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become."* **Oliver Wendell Holmes Jr. (Emphasis Supplied)**

I. INTRODUCTION AND QUESTIONS OF LAW

1. In the present Petition, Paramjit Singh, a Beldar engaged by the Punjab Irrigation Department for 56 days of canal maintenance work, obtained reinstatement and back wages.

2. The present Written Submissions are being filed on behalf of the Appellant(s) before this Hon'ble Court to determine the scope and definition of "industry" under Section 2(j) of the Industrial Disputes Act, 1947 ("**IDA**"). The four questions formulated by this Court on 16.02.2026 are:

- **i.** whether the triple test in ***Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213*** (*"BWSSB v Rajappa*") is correct law;
- **ii.** whether social welfare activities of Government Departments constitute "industrial activities" for Section 2(j);
- **iii.** what State activities constitute "sovereign functions"; and
- **iv.** ancillary issues.

3. The present submissions address all of the above. It is submitted that the triple test in ***BWSSB v. Rajappa*** is incorrect and needs to be expressly overruled. The test in BWSSB is too broad, all-encompassing and with the benefit of experience of 80 years in the operation of Industrial Disputes Act, 1947 ("**ID Act, 1947**") has the effect of defeating the interests of labour. The new test that we propose for consideration by this 9 Judge Bench is as follows:

A. Industry requires an employer-employee relationship, and

B. Industry is limited to those establishments/entities that operate for a profit motive, be it in the private sector or the public sector; and

C. Industry is limited to trade & businesses that are engaged in manufacturing/productions of goods. Only those services where manual labour forms the core of the service will be included in the definition of Industry. Other services, including all professional services are not included in this definition.

4. All other kinds of work, where labour may require protection, requires mechanisms that are independent of the ID Act, 1947 as this Act was never intended to and does not have the mechanisms to cover whole other ranges of activities in the modern economy.

II. PROFIT MOTIVE IS NECESSARY PART OF THE TEST

5. BWS held that "absence of profit motive or gainful objective is irrelevant." This submission respectfully challenges that proposition. Where an enterprise is constituted by public law, funded entirely from the Consolidated Fund, charges nothing or nominal statutory fees, competes in no market, and is incapable of closure for financial reasons, it has none of the attributes of a commercial enterprise. It was never intended to extend "industry" to cover the entirety of government administration.

A. History of Labour Law as protection Against Profit Making Industries, supports this

6. Labour exploitation is a complex and ambiguous concept used to indicate a broad-spectrum conduct and material conditions. It has been described as 'a wrongful gain for the exploiter', determined by some weakness or vulnerability of an exploited person. According to some authors, it would be the 'essence' of the employment relationship, linked to structural properties of the economic systems. Labour

protections in India began during the British colonial period alongside the rise of industrialization in sectors such as textiles, coal, jute, and railways.[1]

7. Workers during this time, particularly women and children, were subjected to long working hours, low wages, and unsafe working conditions with little legal protection. Early labour legislation was introduced primarily due to pressure from British industrialists and humanitarian groups who criticized the exploitation of cheap labour in colonial industries. Several important laws were enacted during this period, forming the initial framework of labour regulation. The Factories Act, 1881 was the first labour law in India and focused mainly on regulating child labour in factories. The Workmen's Compensation Act, 1923 introduced employer liability for workplace injuries and provided compensation for workers harmed during employment. The Indian Trade Unions Act, 1926 gave legal recognition to trade unions and allowed them to register formally. The Trade Disputes Act, 1929 regulated industrial conflicts and imposed restrictions on strikes, particularly in essential services. The Payment of Wages Act, 1936 ensured timely wage payments and prevented arbitrary deductions by employers.

8. After independence, labour legislation expanded significantly to strengthen worker protection and promote social justice. The Industrial Disputes Act, 1947 created mechanisms for resolving industrial conflicts through conciliation, arbitration, and labour courts. The Factories Act, 1948 established standards for health, safety, and working conditions in factories. The Minimum Wages Act, 1948 empowered governments to fix minimum wages to ensure a basic standard of living for workers. The Employees' State Insurance Act, 1948 introduced health insurance and medical benefits for industrial workers, while the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 created a contributory provident fund system to provide long-term financial security. The Maternity Benefit Act, 1961 granted maternity leave and benefits to women employees.

[1] The 'normality' of labour exploitation: The right to fair and just working conditions in the Union's social market economy, Antonio Di Marco, Netherlands Quarterly of Human Rights

9. Comparatively, labour protections in western countries emerged during and after the Industrial Revolution, which began in the late 18th century in the United Kingdom and later spread to the United States, France, and other European nations. Rapid industrialization led to the growth of factories, urban labour markets, and mass employment, but also resulted in severe exploitation of workers. Labourers, including women and children often worked in dangerous conditions with extremely low wages and little legal protection. These harsh conditions gradually led to social reform movements, labour protests, and government intervention.

10. In the United Kingdom, labour regulation began in the early 19th century with factory legislation. The Factory Act 1833 limited the working hours of children and established factory inspectors to monitor working conditions. The Mines Act 1842 prohibited the employment of women and young children in underground mines due to safety concerns. Later reforms such as the Trade Union Act 1871 legalized trade unions, enabling workers to organize collectively and bargain for better working conditions.

11. In the United States, labour protections developed later and were strongly shaped by labour movements and industrial conflicts in the late 19th and early 20th centuries. The Fair Labor Standards Act of 1938 established minimum wage standards, overtime pay, and restrictions on child labour. Earlier legislation such as the National Labor Relations Act 1935 recognized workers' rights to organize unions and engage in collective bargaining.

12. In France, labour protections emerged alongside strong socialist and workers' movements during the late 19th century. The Waldeck Rousseau Law 1884 legalized trade unions, while later reforms introduced limits on working hours and improved labour rights. The Matignon Agreements 1936 significantly expanded labour protections by recognizing collective bargaining rights, increasing wages, and introducing paid leave.

13. Across these countries, labour laws gradually evolved from minimal factory regulation to broader systems of worker protection, including wage regulation, workplace safety standards, social security, and collective bargaining rights.

14. Thus, the whole history of labour protection is in the context of profit-making industry seeking to exploit labour and regulation imposing costs on the capital towards protection of labour. To divorce a welfare legislation such as ID Act, 1947 from the historic context of protection it offered would therefore be incorrect.

B. The definition of Industry in S. 2(i)(j) to the extent indicative also supports that view

15. Section 2(j) defines "industry" by reference to "any business, trade, undertaking, manufacture or calling of employers." Each of these five terms namely business, trade, undertaking, manufacture, calling connotes an activity carried on for economic gain or with a commercial purpose.

III. ESTALISHMENTS THAT ARE NOT PROFIT ORIENTED IF BURDENED WITH SAME LEGAL FRAMEWORK AND COMPLIANCE AS PROFIT ORIENTED ONES WOULD PRESENT NUMEROUS OPERATIONAL CHALLENGES

16. The consideration of creating a distinction between a profit-oriented entity and a non-profit oriented entity is essential as the nature of the functioning and availability of funds and resources in both the entities differ starkly. It is an accepted and settled position of law that an industry comprises of an employer - employee relationship, thus, the functionality of the employer would also have to be considered while considering the definition of ‘industry’.

17. Due to the various financial and resource limitations faced by the non-profit oriented industries, burdening them with same level of legal compliance and welfare laws would excessively restrict their ability to function. The majority of resources which are already limited would be directed towards ensuring tedious legal compliance thereby bringing their functioning to a stand-still. This is because these entities that are already not working to make profit, would be burdened with extra costs and expenses thereby causing losses to them. In such a scenario, the non-profit oriented entities would be forced to stop their operations leading to a gradual demise of various entities which is neither commercially viable nor socially.

18. Reliance in this regard is placed on the judgment of ***Coir Board, Ernakulam v. Indira Devi P.S., (1998) 3 SCC 259:***

> *21. The elimination of profit motive or a desire to generate income as the purpose of industrial activity has led to a large number of philanthropic and charitable activities being affected by the Industrial Disputes Act. In a number of cases where the organisation is run by voluntary social workers, they are unable to cope with the requirements of Industrial Disputes Act. This has led to a cessation of many welfare activities previously undertaken by such organisations which has deprived the general community of considerable benefit and the employees of their livelihood.* ***There are many activities which are undertaken not with a view to secure any monetary returns (whether one labels it as livelihood, income or profit, but for other more generous or different motives.*** *Such activities would not normally be labelled as industrial activities, but for the wide interpretation given judicially to the term "industry" in the Industrial Disputes Act. For example, a number of voluntary organisations used to run workshops in order that the poor, and more particularly poor or destitute women may earn some income. Voluntary welfare organisations organised activities like preparation of spices, masalas, pickles or they would secure small orders from industries for poor women. A small number of persons were employed to assist in the activities. The income earned by these activities was distributed among the women who were given such work. Other voluntary organisations organised tailoring or embroidery classes or similar activities for poor women and provided an outlet for the sale of the work produced by them.* ***These persons would otherwise have found it impossible to secure a market for their products. Such organisations are not organised like industries and they do not have the means or manpower to run them as industries****. A large number of such voluntary welfare schemes have had to be abandoned because of the wide interpretation given to the term industry.*

19. Based on the above, it is evident that including non-profit entities within the sweep of "industry" would do more harm than good. Instead of protecting the workers, it would affect the livelihood and sustenance of these entities. Thus, a separate protection mechanism is required keeping in mind the functionality of these entities and the challenges faced by them to strike a balance in maintaining welfare of the workers and protecting the existence of these entities.

20. The burdensome constraints not only put a strain on daily operation but also limit the longevity and growth of non-profits.[2] Thus, it is the need

[2] https://idronline.org/article/ecosystem-development/do-finance-and-compliance-in-the-social-sector-need-a-makeover/ [Shruti Sunderesan and Suresh Ponappa]

of the hour to ensure that the protection accorded to the profit and non-profit oriented entities take into consideration the operational challenges and create a protection mechanism that protect the rights of employees and also do not jeopardize the existence of the very entities. Thus, bringing non-profit entities within the definition of industries would do away with a fundamental distinction between profit and non-profit oriented entities leading to cascading effects for the latter.

IV. SERVICES OUGHT TO BE INCLUDED ONLY WHEN MANUAL LABOUR IS THE CORE JOB

A. This flows from the text under Section 2(j)

21. The second limb of Section 2(j) extends "industry" to "any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. It describes the workforce-side of an enterprise that already qualifies under the first limb. But even read on its own terms, the second limb contains a critical qualifier: the terms "calling, service, employment, handicraft, industrial occupation or avocation" are couched in the context of workmen engaged in productive, physical, or skilled manual activity.

B. The Text Demands a Labour-Industry Nexus

22. The legislative intent demands that there must be a Labour-Industry Nexus. For instance, the word "handicraft" refers to a skilled trade requiring manual dexterity. "Industrial occupation" connotes work in a productive industrial setting. "Avocation" in the context of workmen means a subordinate employment or trade. Reading these terms together, "service" and "calling" in the second limb must mean service or calling of a kind that involves organised manual, craft, or industrial labour analogous to factory work.

C. Categories to be excluded which lack the labour-industry nexus

23. The following categories of service workers are not covered by the second limb because their employer does not qualify under the first limb and their work has no industrial-labour character:

(i) Liberal professionals, i.e., lawyers, doctors, architects, chartered accountants, whose services depend on individual intellectual attainment and professional judgment.

(ii) Government servants i.e., employees of departments exercising statutory public powers (revenue, police, irrigation, forests),

whose conditions of service are governed by constitutional provisions (Articles 310, 311) and statutory service rules, not industrial law.

(iii) Pure knowledge or consultancy workers i.e., management consultants, data analysts, research scientists, who produce intellectual outputs, not material goods or industrial services.

(iv) Digital platform service workers, i.e., app-based gig workers (ride-hailing, food delivery) who provide a service through a digital platform without a traditional employer-employee relationship and without constituting an "industrial" establishment.

D. As a Matter of Practise, Services in the Gig Economy prove why definition should not be too expansive

24. The rise of the gig economy, platform-based, algorithmically managed, non-standard work is the single most powerful modern demonstration of why "industry" cannot be infinitely extended. If every organised activity employing persons is an "industry," then Uber, Swiggy, Urban Company, and Amazon Flex are all "industries" with millions of "workmen." This would make retrenchment of food-delivery riders subject to Chapter V-B of the IDA; it would require government permission to close a food-delivery app. Legislature and courts worldwide have rejected this outcome, not by expanding "industry" to capture the gig economy, but by creating entirely separate protective frameworks.

i. India: The Code on Social Security 2020

25. The Code on Social Security, 2020, Chapter IX, creates a brand-new framework for "Gig Workers" and "Platform Workers." These are workers outside the traditional employer-employee relationship. Parliament deliberately created a separate chapter for them, not by bringing them within "industry" because their work does not fit the industrial model. This legislative choice reflects Parliament's clear understanding that the industrial model (as defined by the IDA) does not accommodate all working arrangements. Significantly, the Code on Social Security's definition of "gig worker" (Section 2(35)) says: "*a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee*

relationship." They are specifically not "workmen" as understood under the ID Act, 1947.

ii. United Kingdom: The Uber Judgment

26. In ***Uber BV v. Aslam***[3], the UK Supreme Court held that Uber drivers are "workers" (not employees) entitled to minimum wage and holiday pay. However, the Court did not term the gig-workers as employees which remains reserved for more regular and secure work structures. Thus, it is evident that different jurisdictions accord protection to distinct categories of occupation under specialised legislation, keeping in mind the nature of the job.

iii. European Union: Directive 2019/1152 on Transparent and Predictable Working Conditions

27. The EU Directive on Transparent and Predictable Working Conditions (2019/1152) extended employment protections to "all workers in the Union who have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State." Critically, the Directive applies to on-demand workers, platform workers, and voucher-based workers but only where there is a bilateral employment relationship. Member States are required to exclude certain categories: "the nature of the actual relationship" must be assessed, and purely autonomous self-employed activity is excluded. Importantly, national public administrations exercising governmental powers are exempted from the scope of the Directive.[4]

28. The EU, thus, draws the same distinction: commercial employment attracts labour protections; governmental public-service activity does not. Thus, this demonstrates that while the different categories of employment must be accorded protection, the protection must be accorded based on the functionality and nature of the occupation.

29. If the nature of the work does not fit the industrial model, legislatures create separate protective frameworks (as India did with the Codes on Social Security and Industrial Relations). Thus, the correct response to the gap in protection for atypical workers is targeted legislation, not judicial expansion of "industry" to cover entities that bear no resemblance to commercial enterprises.

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[3] [2021] UKSC 5

[4] Recital 8, Directive 2019/1152 on Transparent and Predictable Working Conditions.

V. LAWS REGULATING THE SERVICE SECTOR INCLUDES A SEPARATE REGIME

30. The existence of a dense, comprehensive body of law specifically regulating the service sector, distinct from industrial law confirms that "industry" under the IDA was never intended to encompass all services. If the IDA covered all services, none of these separate frameworks would have been necessary.

A. India: The Four Labour Codes (2019–2020)

Parliament enacted four Labour Codes consolidating 29 central labour statutes. This legislative architecture is itself instructive:

(i) The **Code on Wages, 2019** covers all employees across all sectors, including those NOT in "industry" under the IDA. Its universal coverage proves that not all workers must be brought under "industry" to be protected.

(ii) The **Code on Social Security, 2020** specifically provides for gig workers, platform workers and unorganised workers entirely outside the IDA framework.

(iii) The **Occupational Safety, Health and Working Conditions Code, 2020** covers establishments across sectors, not limited to "industry."

(iv) The **Industrial Relations Code, 2020** governs industrial relations in "industry". Its exclusion of "activity relatable to the sovereign functions of the Government" confirms the correct scope of industry.

31. The four codes together demonstrate that Parliament has deliberately created separate frameworks for different categories of workers- commercial industrial workers, service workers, gig workers, and government servants, precisely because a single definition of "industry" cannot encompass them all.

32. Article 309 of the Constitution regulates the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. Rules framed under Article 309 (e.g., CCS (CCA) Rules, 1965) *inter alia* regulate recruitment, discipline, retirement. It has been held in the case of ***B.S. Vadera v. Union of India (1969, AIR 1969 SC 118)*** that Rules under

Article 309 have the force of law until replaced by legislation. Service law is a complete code.

B. The UK's Sectoral Approach

33. In the United Kingdom, distinct statutory frameworks govern: (i) commercial industry (Employment Rights Act 1996, Trade Union and Labour Relations (Consolidation) Act 1992); (ii) public sector employment (Civil Service Management Code; Constitutional Reform and Governance Act 2010); (iii) healthcare (National Health Service Act 2006 and NHS employment frameworks); (iv) education (Education Act 2002 and teacher-specific contracts); and (v) gig work (Good Work Plan 2019 and reforms to the Employment Rights Act). This comprehensive sectoral architecture reflects the correct position: one general statute cannot govern all human economic activity. This rationale and logic ought to be considered and implemented while deciding the contours of what is to be included under the definition of "industry".

VI. Governmental activities and public welfare functions of the State fall Outside the purview of the definition of "Industry"

34. Parliament has in the Industrial Relations Code, 2020, Section 2(p) (in force from 21.11.2025) excluded "any activity 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." This is a binding, operative exclusion. For all matters arising after 21.11.2025, and as an interpretive signal for matters governed by the IDA, this exclusion must be given full effect.

35. It is respectfully submitted that the activities undertaken by the State in discharge of its governmental and public welfare obligations ought not to be brought within the ambit of the definition of *"industry"* under the *Industrial Disputes Act, 1947*. The binding decisions of the Hon'ble Supreme Court in Union of India v. Jai Narain Singh[5], and Executive Engineer v. K. Somasetty[6] correctly recognise this position and hold that functions performed by the State in the exercise of its governmental responsibilities cannot be equated with industrial activities.

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[5] 1995 Supp. (4) SCC 672
[6] (1997) 3 SCT 277

36. The State, under the constitutional framework, is entrusted with the duty of securing a welfare state, as envisaged under the Directive Principles of State Policy. The discharge of these obligations through executive and legislative action is fundamentally public and governmental in character, aimed at promoting social welfare, public health, infrastructure, and essential civic services. Such activities are not motivated by commercial considerations but are undertaken in fulfilment of constitutional obligations. Consequently, the State, while performing such functions, cannot be regarded as an *"industry"* within the meaning of the Industrial Disputes Act.

37. Although the decision in *Bangalore Water Supply* restricted the exemption primarily to "sovereign functions", it did not comprehensively delineate the full scope of what constitutes such functions. Importantly, the judgment itself acknowledged that the expression *"sovereign"* is often more appropriately understood as referring to governmental functions of the State. In contemporary governance, the nature of sovereign responsibility has evolved beyond the traditional core functions of defence, law and order, and administration of justice, and now encompasses a broad spectrum of public welfare and essential public utility services performed by the State.

38. In this context, a constitutionally informed interpretation of the term *"sovereign"* must be adopted. Governmental functions carried out in furtherance of public welfare and the Directive Principles should be treated as part of the State's sovereign responsibilities.

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Place: New Delhi

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AoR for the State of Punjab

IN THE SUPREME COURT OF INDIA **XIA**

(CIVIL APPELLATE JURISDICTION)

SLP (C) No. 14156/2021

IN THE MATTER OF:

M/s Shree Gopal Krishna Gosala, Cuttack ...Petitioner

Versus

Ashok Kumar Behera ...Respondent

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NEW DELHI
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IN THE SUPREME COURT OF INDIA AT NEW DELHI

SLP (C) No. 14156/2021

M/s Shree Gopal Krishna Gosala, Cuttack vs. Ashok Kumar Behera

Updated Written Submissions on behalf of the Petitioner

- The Petitioner is a charitable institution originally registered in 1937–38 under the Societies Registration Act as *Shree Victoria Gorakhyani Sabha*, bearing Certificate No. 1 of 1937–38. **[*See.* Annexure P1 (pp. 23–33)]**. It is apposite to mention that the primary object of the institution is the protection and maintenance of blind, old, diseased and disabled cows and bulls.

- In 1971–72, the name of the institution was changed to *M/s Shree Gopal Krishna Gosala*, and it was duly registered before the Inspector General of Registration, Orissa, vide Registration No. 6124/80 of 1971–72. The activities of the *Gosala* are sustained through voluntary donations and the incidental sale of milk and related by-products to meet necessary maintenance expenses. It would not be out of place to mention that the Petitioner Institution has been granted statutory recognition as a charitable institution under Section 12AA of the Income Tax Act **[*See.* Annexure P17 (p. 154)]** as well as approval under Section 80G(5)(vi) **[*See.* Annexure P16 (p. 153)]**

- To fulfil the objectives and to look after the cattle or livestock, people are employed with the approval of the committee, and they are paid as honorarium as sevatas. Their families are provided the requisite shelter and food as well as are paid the honorarium, which is increased on the request and approval of the Committee. The present Respondent approached the organization and was employed as a Grass Cutter and to feed fodder to the cows in July 2001.

- The Hon'ble Supreme Court in State of U.P. v. Jai Bir Singh, (2005) 5 SCC 1 doubted the correctness of the ratio laid down in Bangalore Water Supply & Sewerage Board, (1978) 2 SCC 213 and referred the issue to a Bench with strength comprising of Hon'ble 7 Judges.

- The Respondent herein continued his nuisance and created issues with the management of the Petitioner and also started to skip his duties without intimation on certain occasions.

- The Respondent was asked to vacate the accommodation provided by the Petitioner. However, he paid no heed and refused to vacate. A complaint was filed by the Petitioner with the Madhupatna Police Station.

- The Respondent, through **an unregistered trade union** styled "Cuttack Gosala and Dairy Farm Shramik" **[See. Annexure**

P20 (p. 161)] raised a dispute before the Ld. Industrial Tribunal against termination of his services . Due to the failure of the conciliation process, the Respondent through the unregistered Trade Union filed a claim before the Presiding Officer, Labour Court, Orissa, Bhubaneswar in I.D. Case No. 25/08.

- During the pendency of the claim, the Respondent's claim for Minimum Wages under the Minimum Wages Act, 1948, was rejected on the ground that the Petitioner being a charitable organization was not amenable to the Minimum Wages Act.

- The Ld. Presiding Officer, Labour Court, Bhubaneshwar vide Award dated 02.07.2011 allowed the claim of the Respondent, directing reinstatement of the Respondent in the organization and also, awarding a lump sum amount of Rs. 30,000/- in lieu of back wages, and in case of failure to pay the said amount, 9% p.a. interest to be charged till its realization. Reliance was placed on the decision of this Hon'ble Court in Bangalore Water Supply & Sewerage Board, (1978) 2 SCC 213, to hold that the Petitioner is an industry under Section 2(j) of the Industrial Disputes Act, 1947. Despite the absence of proof of termination, amongst other things, the Ld. Presiding Officer passed the said Award in an unjustified and mechanical manner. **[*See.* Annexure P14 (pp. 124-136)]**

- Aggrieved, the Petitioner filed W.P. No. 25028 of 2011 in High Court of Orissa at Cuttack.

- This Hon'ble Court in State of U.P. v. Jai Bir Singh, (2017) 3 SCC 311 considering the serious and wide ranging implications of the issue that fall for determination as also the fact that serious doubts have been expressed in the reference order about the correctness of the view taken in Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213 referred the issue to a Bench with strength comprising of Hon'ble 9 Judges.

- The Hon'ble High Court relying solely upon the decision in Bangalore Water Supply & Sewerage Board v. A. Rajappa, (1978) 2 SCC 213, upheld the Award dt. 02.07.2011, dismissed the writ petition without a detailed examination of the dominant purpose test and, as a consequence, held the Petitioner to be covered under the definition of "Industry." vide Impugned Order dt. 22.07.2021.

- Aggrieved, the Petitioner filed SLP (Civil) No. 14156 of 2021 before the Hon'ble Court. This Hon'ble Court was pleased to issue Notice vide order dated 17.09.2021. Further, this Hon'ble Court vide order dated 17.02.2023 was pleased to tag the present matter with Civil Appeal No. 897/2002 on the issue of interpretation of

the expression "Industry" under the definition in Section 2(j) of the Industrial Disputes Act, 1947.

Issue

Whether the Petitioner, a Gosala, being engaged in charitable work, is covered under the definition of the definition of Industry as provided in Section 2(j) of the Industrial Disputes Act, 1947?

Submissions

1. The wider interpretation of the definition of "Industry" on charitable and philanthropic activities adversely impacts such activities and the same could not be in accordance with the provisions of the Act.

The Petitioner was originally registered in 1937–38 as Shree Victoria Gorakhyani Sabha and subsequently renamed Shree Gopal Krishna Gosala. Its foundational documents and bye-laws establish that its principal object is the protection, maintenance and welfare of cows; particularly old, diseased and abandoned bovine animals.

It is a matter of record that the Petitioner is registered under Section 12AA and approved under Section 80G of the Income Tax Act (as reflected in the record). As such, these statutory recognitions affirm its charitable character.

The jurisprudential test, even prior to *Bangalore Water Supply (Supra)*, required that the activity must bear the character of trade or business in a commercial sense.

In this regard, it is submitted that this Hon'ble Court in *Coir Board, Ernakulam v. Indira Devi P.S., (1998) 3 SCC 259* observed:

"19. Looking to the uncertainty prevailing in this area and in the light of the experience of the last two decades in applying the test laid down in the case of Bangalore Water Supply and Sewerage Board [(1978) 2 SCC 213 : 1978 SCC (L&S) 215 : AIR 1978 SC 548] it is necessary that the decision in Bangalore Water Supply and Sewerage Board case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215 : AIR 1978 SC 548] is re-examined. The experience of the last two decades does not appear to be entirely happy. Instead of leading to industrial peace and welfare of the community (which was the avowed purpose of artificially extending the definition of industry), the application of the Industrial Disputes Act to organisations which were, quite possibly, not intended to be so covered by the machinery set up under the Industrial Disputes Act, might have done more damage than good, not merely to the organisations but also to employees by the curtailment of employment opportunities.

20. Undoubtedly, it is of paramount importance that a proper law is 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 kind of measures which may be required for the latter may be different, and may have to be tailored to suit the nature of such organisations, their infrastructure and their financial capacity as also the needs of their employees.

21. The elimination of profit motive or a desire to generate income as the purpose of industrial activity has led to a large number of philanthropic and charitable activities being affected by the Industrial Disputes Act. In a number of cases where the organisation is run by voluntary social workers, they are unable to cope with the requirements of Industrial Disputes Act. This has led to a cessation of many welfare activities previously undertaken by such organisations which has deprived the general community of considerable benefit and the employees of their livelihood. There are many activities which are undertaken not with a view to secure any monetary returns (whether one labels it as livelihood, income or profit, but for other more generous or different motives. Such activities would not normally be labelled as industrial activities, but for the wide interpretation given judicially to the term "industry" in the Industrial Disputes Act. For example, a number of voluntary organisations used to run workshops in order that the poor, and more particularly poor or destitute women may earn some income.

Voluntary welfare organisations organised activities like preparation of spices, masalas, pickles or they would secure small orders from industries for poor women. A small number of persons were employed to assist in the activities. The income earned by these activities was distributed among the women who were given such work. Other voluntary organisations organised tailoring or embroidery classes or similar activities for poor women and provided an outlet for the sale of the work produced by them. These persons would otherwise have found it impossible to secure a market for their products. Such organisations are not organised like industries and they do not have the means or manpower to run them as industries. A large number of such voluntary welfare schemes have had to be abandoned because of the wide interpretation given to the term industry.

22. Apart from such activities, there may be other activities also which are undertaken in the spirit of community service, such as charitable hospitals where free medical services and free medicines may be provided. Such activities may be sustained by free services, given by professional men and women and by donations. Sometimes such activities may be sustained by using the profits in the paid section of that activity for providing free services in the free section. Doctors who work in these hospitals may work for no returns or sometimes for very nominal fees. Fortunately,

philanthropic instinct is far from extinct. Can such philanthropic organisations be called industries? The definition needs re-examination so that, while the workers in an industry have the benefit of industrial legislation, the community as such is not deprived of philanthropic and other vital services which contribute so much to its well-being. Educational services and the work done by teachers in educational institutions, research organisations, professional activities, or recreational activities, amateur sports, promotion of arts (fine arts and performing arts, promoting crafts and special skills, all these and many other similar activities also require to be considered in this context."

It may, however, be submitted that a reference made to a Larger Bench was declined in Coir Board Ernakulam Kerala State v. Indira Devai P.S, (2000) 1 SCC 224.

However, Constitution Bench (5JB) of this Hon'ble Court has considered the above observations in *State of U.P. v. Jai Bir Singh, (2005) 5 SCC 1* and held:

"35. ..... The abovequoted observations were criticised on behalf of the employees stating that for making them, there was no material before the Court. We think that the observations of the learned Judges are not without foundation. The experience of Judges in the Apex Court is not derived from the case in which the

observations were made. The experience was from the cases regularly coming to this Court through the Labour Courts. It is experienced by all dealing in industrial law that overemphasis on the rights of the workers and undue curtailment of the rights of the employers to organise their business, through employment and non-employment, has given rise to a large number of industrial and labour claims resulting in awards granting huge amounts of back wages for past years, allegedly as legitimate dues of the workers, who are found to have been illegally terminated or retrenched. Industrial awards granting heavy packages of back wages, sometimes result in taking away the very substratum of the industry. Such burdensome awards in many cases compel the employer having moderate assets to close down industries causing harm to interests of not only the employer and the workers but also the general public who is the ultimate beneficiary of material goods and services from the industry. The awards of reinstatement and arrears of wages for past years by Labour Courts by treating even small undertakings of employers and entrepreneurs as industries is experienced as a serious industrial hazard particularly by those engaged in private enterprises. The experience is that many times idle wages are required to be paid to the worker because the employer has no means to find out whether and where the workman was gainfully employed pending adjudication of

industrial dispute raised by him. Exploitation of workers and the employers has to be equally checked. Law and particularly industrial law needs to be so interpreted as to ensure that neither the employers nor the employees are in a position to dominate the other. Both should be able to cooperate for their mutual benefit in the growth of industry and thereby serve public good. An overexpansive interpretation of the definition of "industry" might be a deterrent to private enterprise in India where public employment opportunities are scarce. The people should, therefore, be encouraged towards self-employment. To embrace within the definition of "industry" even liberal professions like lawyers, architects, doctors, chartered accountants and the like, which are occupations based on talent, skill and intellectual attainments, is experienced as a hurdle by professionals in their self-pursuits. In carrying on their professions, if necessarily, some employment is generated, that should not expose them to the rigors of the Act. No doubt even liberal professions are required to be regulated and reasonable restrictions in favour of those employed for them can, by law, be imposed, but that should be the subject of a separate suitable legislation."

Thus, this Hon'ble Court observed that a worker-oriented approach in construing the definition of industry, unmindful of the interest of the employer or the owner of the industry and the

public who are ultimate beneficiaries, would be a one-sided approach and not in accordance with the provisions of the Act.

Crucially, the Parliament, through the **Industrial Disputes (Amendment) Act, 1982**, sought to exclude certain categories, including charitable institutions from the definition of "industry" envisaging as follows;

Clause (j) shall stand substituted as follows when clause (c) of section 2 of the Industrial Disputes (Amendment) Act, 1982 (46 of 1982) will come into force:—

(j) "industry" means any systematic activity carried on by co-operation 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 5A 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, but does not include—

(1) any agricultural 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 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 (69 of 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 individual 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;

Although the amendment has not been notified, it is a clear indicator of legislative disapproval of an excessively broad and disproportionate interpretation.

2. Without prejudice to the above, the Petitioner to be covered under the definition of "Industry" must be engaged in activities that are at least analogous to trade or business in a commercial sense.

- The Petitioner is a charitable organization which takes care of ill bovine animals who do not have food and shelter. The Petitioner is run through the mode of donations by the society and

the government and in order to meet shortfall in their expenditure and to sustain the functioning of the Gosala, books, journals and milk are sold.

- The Gosala is functioning for the service and welfare of bovine animals and not for large scale commercialization. The Gosala only generates scanty milk for which no commercialization is possible. It is only an asylum for these bovine animals against butchery and slaughter.

- To set up an industry, the most vital element is "Capital" to carry out systematic activities. This element is clearly lacking as the Petitioner is wholly dependent on public donations and does not make any profit/loss.

- The Constitution Bench (6JB) of Hon'ble Supreme Court in *Safdarjung Hospital v. Kuldip Singh Sethi, (1970) 1 SCC 735* held:

"21. It, therefore, follows that before an industrial dispute can be raised between employers and their employees or between employers and employers or between employees and employees in relation to the employment or non-employment or the terms of employment or with the conditions of labour of any person, there must be first established a relationship of employers and employees associating together, the former following a trade, business, manufacture, undertaking or calling of employers in the production

of material goods and material services and the latter following any calling, service, employment, handicraft, or industrial occupation or avocation of workmen in aid of the employers' enterprise. It is not necessary that there must be a profit motive but the enterprise must be analogous to trade or business in a commercial sense.

22. We do not find it necessary to refer to the earlier cases of this Court from which these propositions have been deduced because they are all considered in the Gymkhana Club case. We accept the conclusion in that case 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.""

Therefore, the Constitution Bench in *Safdarjung Hospital (Supra)* held that although profit motive is not decisive, the enterprise must be analogous to trade or business. As such, mere incidental generation of revenue, for sustaining charitable objects, does not convert a charitable institution into an industry. Therefore, by no stretch of imagination, self-sustainability can be equated with commercial profiteering.

Applying the same reasoning, even if sale of milk or its by-products is assumed, it remains ancillary to the primary

charitable objective. The predominant activity test, as elucidated in *Bangalore Water Supply (Supra)*, operates against characterising the Petitioner as an industry.

Moreover, the Petitioner does not operate in a competitive market environment, does not engage in systematic capital deployment for profit maximisation, nor does it function as a dairy enterprise in the commercial sense.

- Further, the Hon'ble Supreme Court in *University of Delhi v. Ram Nath, 1963 SCC OnLine SC 117* held:

"17. Reading the judgment as a whole, there can be no doubt that the question as to whether education work carried on by educational institutions like the University of Delhi which have been formed primarily and solely for the purpose of imparting education amount to an industry within the meaning of Section 2(14), was not argued before the Court and was not really raised in that form. The main attack against the award proceeded on the basis that what the Corporation was doing through its several departments was work which could be regarded as regal or governmental, and as such, was outside the purview of the Act, and that argument was rejected. The other point which is also relevant is that one of the tests laid down by this Court was that if a department was carrying on predominantly industrial activities, the fact that some of its

activities may not be industrial did not matter. Applying the same test to the Corporation as a whole, the question was examined and the inclusion of the education department in the award was upheld. It would thus be clear that if the test of the character of the predominant activity of the institution which was applied to the Corporation is applied to the University of Delhi, the answer would be plainly against the respondents. The predominant activity of the University of Delhi is outside the Act, because teaching and teachers connected with it do not come within its purview, and so, the minor and incidental activity carried on by the subordinate staff which may fell within the purview of the Act cannot alter the predominant character of the institution."

3. The onus lies on the Respondent to prove that the Petitioner is engaged in the definition of "Industry."

- There are no formal appointment orders nor termination orders passed by the Petitioner. The Respondent voluntarily abandoned his service as a Sevata. The Petitioner is neither a manufacturing unit nor does it earn any profit through this medium. The mere averments by the Respondent without any documentary evidence ought not to be appreciated and as such the onus lies on the Respondent to prove his claim.

- It is submitted that as per the provisions of the Income Tax Act, the Petitioner is registered as a charitable organization. The provisions of Minimum Wages Act, 1948 and Orissa Shops and Establishment Act, 1956 do not apply to the Petitioner.

- The Hon'ble Supreme Court in *State of Gujarat v. Pratamsingh Narsinh Parmar, (2001) 9 SCC 713* held:

"5. If a dispute arises as to whether a particular establishment or part of it wherein an appointment has been made is an industry or not, it would be for the person concerned who claims the same to be an industry, to give positive facts for coming to the conclusion that it constitutes "an industry". ..... In the absence of any assertion by the petitioner in the writ petition indicating the nature of duty discharged by the petitioner as well as the job of the establishment where he had been recruited, the High Court wholly erred in law in applying the principles enunciated in the judgment of this Court in Jagannath Maruti Kondhare [(1996) 2 SCC 293 : 1996 SCC (L&S) 500] to hold that the Forest Department could be held to be "an industry"."

The foregoing dictum of this Hon'ble Court was followed in *Satish Kumar v. Holistic Child Development India & Ors. (2024 SCC OnLine Del 8420)*, wherein the Hon'ble High Court at Delhi was pleased to observe as follows;

"7. So far as the claim of the petitioner that the respondent is "industry", as mentioned above, the admitted pleadings are to the effect that the respondent is a public charitable trust, engaged in amelioration of poor, orphaned, abandoned and destitute children. The onus to prove that the respondent is "industry" was on the petitioner but he did not lead any evidence on this aspect. The situs of the burden to prove as to whether the establishment in which the claimant was working is or is not an "industry" is no longer res integra. In the case of State of Gujarat v. Pratamsingh Narsinh Parmar, (2001) 9 SCC 713, the Supreme Court specifically held that if a dispute arises as to whether a particular establishment or part thereof wherein an appointment had been made is or is not "industry", it would be for the person concerned who claims the same to be "industry", to give positive facts for coming to conclusion that it was "industry". In the present case, since the petitioner did not lead any positive evidence to show that the respondent constitute an "industry". On the contrary, in his chief examination affidavit, the witness MW1 examined by the respondent categorically deposed that the respondent is a charitable institution and their object is to help poor and orphaned children, so it is not an "industry" within the meaning of Section 2(j) of the Act. Although MW1 was cross examined substantially, his testimony in this regard was not assailed. Therefore, I find no infirmity in the

findings recorded by the learned Labour Court that the respondent is not an "industry".

8. Coming to the other aspect, viz, the relationship of employer and employee between the respondent and the petitioner, it would be significant to note that in his Statement of Claim, the petitioner did not specify the post on which he was appointed or was employed. Admittedly, the petitioner was never issued any appointment letter by the respondent and no steps were taken by the petitioner to summon employment records from office of the respondent. Towards the records of remuneration, the petitioner placed on record of the trial court certain payment vouchers. Although those vouchers were not proved in accordance with law, but the same having been filed by the petitioner himself, those vouchers can be read against him. Those vouchers clearly reflect that he was being paid on day to day basis for the work of cleaning office of the respondent. In other words, there is no reliable documentary evidence to establish the relationship of employer and employee between the parties.

9. Thence, on both counts, namely the status of the respondent being an "industry" and the existence of employer-employee relationship between the parties, no cogent evidence could be brought on record by the petitioner."

- Taking a similar view, Hon'ble Rajasthan High Court (in the context of the Gosala) in the case of *Ashok Kumar v. President, 2016 SCC OnLine Raj 8677* held:

"6. The respondent, took a specific plea in its reply before the Tribunal that Gaushala does not involve any of the activities illustrated in Rule 2(j) of the Industrial Disputes Act, referred to supra, and thus, is not an industry. At that point of time, the burden shifted on to the petitioner to prove to the otherwise. The petitioner, if he so desired, could have summoned the accounts of the Gaushala to prove that the Gaushala was being run with the motive to make gain or profit, trade or business purposes as warranted in Rule 2(j)(ii) of the Industrial Disputes Act.

7. Therefore, I am of the firm opinion that the learned Tribunal was perfectly justified in holding that the respondent Gaushala was not covered by the definition of Industry and rejected the claim. Evidently, as the employer was not covered within the definition of Industry, the learned Tribunal had no jurisdiction to entertain the claim of the petitioner under the provisions of the Industrial Disputes Act. Thus, the impugned award being just and legal does not call for any interference by this Court in the exercise of its extraordinary writ jurisdiction."

(emphasis supplied)

4. The claim against the Petitioner is not maintainable in any form.

- The Petitioner engages the people as Sevatas or they join on their own accord for a Honorarium which is raised on their request and approved by the General Body based on the amount of donations received from the members of the Society.

- Further, the alleged "industrial dispute" was raised through an unregistered Trade Union (thus non-existent) which was in any case stranger to the entire dispute.

Prayer

Therefore, it is most humbly submitted that the Special Leave Petition be allowed and for this act of kindness, the Petitioner herein shall as in duty bound ever pray.

New Delhi

Dated: 27.02.2026

Drawn & filed by:

(Anirudh Sanganeria)

Advocate for the Petitioner