IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

C.A.No. 897 of 2002

STATE OF U.P. **…APPELLANT**

VERSUS

JAI BIR SINGH **…RESPONDENT**

WRITTEN SUBMISSIONS BY K.M. NATARAJ, ASG ON BEHALF OF STATE OF UTTAR PRADESH

1. In view of the coming into force of the Industrial Relations Code, 2020 (**"the Code"**), all disputes arising on or after 21.11.2025 shall be governed by the provisions of the said Code. However, for the purposes of the present matter, interpretation is required to be made of the definition of *"industry"* under Section 2(j) of the Industrial Disputes Act, 1947, which had been interpreted by this Hon'ble Court in ***Bangalore Water Supply & Sewerage Board v. A. Rajappa & Ors*** **(1978) 2 SCC 213.**

2. It is submitted that the legislature had made an attempt through the Industrial Disputes (Amendment) Act, 1982 to redefine the expression *"industry"* **so as to remove the ambiguities** that had arisen on account of the expansive interpretation given in ***Bangalore Water Supply & Sewerage Board v. A. Rajappa & Ors*** **(1978) 2 SCC 213.** Even though this amended provision has not been brought into force, it remains a strong indicator of legislative intent to restrict the overly broad interpretation of *"industry"* that had developed through judicial precedent.

3. Therefore, the definition of *"industry"* under the Code must be understood as **clarificatory in nature, reflecting the legislative intent to resolve the ambiguities** that had arisen under the earlier framework and this Hon'ble Court may rely on **these provision as an interpretive aid to understand the policy direction of Parliament and to adopt a purposive construction that**

prevents governmental departments performing sovereign and welfare functions from being brought within the industrial dispute framework.

4. It is respectfully submitted that **the State of Uttar Pradesh seeks reconsideration** of the interpretation of the definition of *"industry"* as laid down by this Hon'ble Court ***Bangalore Water Supply & Sewerage Board v. A. Rajappa & Ors*** **(1978) 2 SCC 213, keeping in view the following aspects:**

(i) The subsequent legislative developments, including the unnotified amendments and the enactment of the Industrial Relations Code, 2020, may be read as clarificatory in nature, reflecting the intent of Parliament regarding the scope and ambit of the definition of *"industry"*.

(ii) The concept of 'sovereign functions' ought not to be understood in a narrow colonial sense but must be interpreted in the context of a constitutionally governed democratic State.

(iii) The interpretation must also consider the consequences that flow from an overly broad construction and the need for an appropriate balancing of competing considerations.

Therefore, the definition of ***"industry"*** cannot be given a sweeping or overly broad interpretation.

5. It is submitted that in the respective Civil Appeals filed by different departments of the State of Uttar Pradesh, separate written submissions have already been placed on record. The same may be read as forming part of the present submissions to avoid repetition and for the sake of brevity.

INTERPRETATION OF THE DEFINITION OF 'INDUSTRY' UNDER THE INDUSTRIAL RELATIONS CODE, 2020.

6. The Industrial Relations Code, 2020 (**"the Code"**) notified on 28.11.2025, consolidates the law relating to trade unions, conditions of employment in industrial establishments and investigation and settlement of industrial disputes. The Code further removes interpretational ambiguities that had arisen through judicial expansion of the definition under the Industrial Dispute Act, 1947 in ***Bangalore Water Supply & Sewerage Board v. A. Rajappa & Ors*** **(1978) 2 SCC 213.**

7. The Code defines ***'Industry'*** under Section 2(p) as follows:

> ***(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 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;*

8. Section 2(p) of the Industrial Relations Code, 2020, while adopting a wide definition of "*industry,*" expressly excludes certain categories of activities.

9. The definition of "*industry*" under Section 2(p) of the Industrial Relations Code, 2020 refers to any systematic activity carried on through cooperation between an employer and workers, whether such workers are employed directly or through an agency including contractors, for the production, supply or distribution of goods or services intended to satisfy human wants

or wishes, other than those which are purely spiritual or religious in nature. The provision further clarifies that an activity may qualify as an industry irrespective of whether capital has been invested or whether the activity is carried on with a profit motive, thereby emphasising that the essential element is the organised cooperation between employer and labour in carrying out an economic activity. However, the definition also expressly provides important exclusions, one of which **"relates to sovereign functions"** of the Government.

9.1. First, institutions owned or managed by organisations wholly or substantially engaged in charitable, social or philanthropic service are excluded because their dominant purpose is public welfare rather than economic production or commercial exchange.

9.2. Second, exclusions in the definition of "industry" under Section 2(p) of the Code is *"activities of the appropriate Government relatable to sovereign functions."* The legislature has consciously used the phrase *"relatable to sovereign functions,"* which indicates that the exclusion is not confined only to primary and inalienable sovereign function or other sovereign functions but also to actions relatable to sovereign functions. **The language expands the scope of the exclusion to cover governmental activities that bear a nexus with sovereign functions. The legislative intent, therefore, is to give the expression a broad and purposive interpretation rather than a narrow one.**

9.3. Consequently, a wide range of governmental activities undertaken in discharge of Constitutional obligations, including welfare functions of the State carried out in furtherance of the Directive Principles of State Policy, stand excluded from the definition of industry. The Code further widens the exclusion by using the phrase **"including all activities"** in relation to functions of the Central Government **concerning defence research, atomic energy, and space.** This language clearly demonstrates the legislative

intent to keep 'such' governmental functions **completely outside the ambit of "industry", whether sovereign or non-sovereign.**

9.4. Third, the definition further excludes domestic service, which involves personal services rendered within private households and lacks the organised commercial structure of industrial activity, and finally permits the Central Government to notify additional activities that may be excluded from the ambit of industry, thereby providing statutory flexibility to keep certain sectors outside the framework of industrial relations law.

10. In view of the above, it is submitted that while the Industrial Relations Code, 2020 adopts a broad definition of "industry" to cover organised economic activities, the legislature has consciously incorporated specific exclusions to preserve the Constitutional distinction between industrial employment and governmental functions. In particular, the express exclusion of activities relatable to sovereign functions reflects a clear legislative intent to ensure that governmental and **welfare functions** undertaken in discharge of Constitutional obligations remain outside the ambit of industrial dispute legislation. The Code therefore clarifies and restores the proper boundary between industrial activity and the functioning of the State.

TRADITIONAL COLONIAL CONCEPTION OF SOVEREIGN FUNCTIONS IS INCOMPATIBLE WITH THE INDIAN CONSTITUTIONAL SYSTEM

11. Sovereign functions refer to those activities which are performed by the State following the directive principles and in discharge of its Constitutional responsibilities. Traditionally, the concept of sovereign function has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon as "Sovereign functions should be restricted to those functions, which are primarily inalienable, and which can be performed by the state alone." Such definitions were

historically developed in the context of **common law systems** influenced by **colonial jurisprudence** and therefore reflected a limited conception of the role of the State.

12. The British/colonial concept of 'sovereign function' viewed the State primarily as an authority responsible for maintaining order, administering justice and protecting territorial integrity and such action of the state could never be questioned. Under such a framework, welfare activities such as education, healthcare and social security were not regarded as primary work of the government or sovereign functions. Consequently, judicial reasoning based on such concepts does not fully correspond with the Indian democratic Constitutional structure.

13. The Indian Constitutional system is fundamentally different. India is a Constitutional welfare State, where the Government is entrusted with a wide range of responsibilities extending far beyond traditional regulatory functions. The Constitution through directive principles envisage an active State which is duty bound to secure social justice, promote welfare and ensure equitable development.

14. **India is a welfare state**, in the **Indian Constitutional framework**, with the guidance of **directive principles,** the State performs numerous functions in the fields of education, healthcare, social welfare, labour protection, economic development and environment and forest [as mentioned in Pg No. 62 of Vol. I (written submissions filed by State of UP)]. These functions/activities are part of the State's Constitutional obligations. Therefore, when the Government discharges such duties, it acts in its 'sovereign capacity' as a welfare State.

15. The phrase 'sovereign function' has been used in colonial sense and means those actions of the government that cannot be questioned, however the same is not applicable in the sense of Indian democratic system as there is judicial review of all government actions and the

government does plethora of functions guided by directive principles. The judicial review of any state function is part of **basic structure** and the line between sovereign and non-sovereign function for the purpose of judicial scrutiny in Indian judicial system is very narrow since the government functions are amenable to judicial review. Therefore, the meaning ascribed to 'sovereign function' in colonial conception cannot be applied while interpreting Indian legislations.

16. The western philosophy cannot be made applicable to the Indian democratic system. At the same time, the Indian Constitutional system **ensures accountability** of governmental action through the doctrine of judicial review, which has been recognised as part of the basic structure of the Constitution.

17. In this regard, it is useful to note the observation of this Hon'ble Court, sitting in Constitutional bench of five judges in the present matter, ***State of U.P. v. Jai Bir Singh*, (2005) 5 SCC 1,** while referring the matter to seven judges shared the aforesaid view and observed as follows:

> "***38.*** *We also wish to enter a caveat on* ***confining "sovereign functions" to the traditional so described as "inalienable functions" comparable to those performed by a monarch, a ruler or a non-democratic government. The learned Judges in Bangalore Water Supply & Sewerage Board case [(1978) 2 SCC 213 : 1978 SCC (L&S) 215] seem to have confined only such sovereign functions outside the purview of "industry" which can be termed strictly as constitutional functions of the three wings of the State i.e. executive, legislature and judiciary.*** *The concept of sovereignty in a constitutional democracy is different from the traditional concept of sovereignty which is confined to "law and order", "defence", "law-making" and "justice dispensation****". In a democracy governed by the Constitution the sovereignty vests in the people and the State is obliged to discharge its constitutional obligations contained in the directive principles of State policy in Part IV of the Constitution of India. From that point of view, wherever the Government undertakes public welfare activities in discharge of its constitutional obligations, as provided in Part IV of the Constitution, such activities should be treated as activities in discharge of sovereign functions falling outside the purview of "industry". Whether employees employed in such welfare activities of the Government require protection, apart from the constitutional rights conferred on them, may be a subject of separate legislation but***

for that reason, such governmental activities cannot be brought within the fold of industrial law by giving an undue expansive and wide meaning to the words used in the definition of industry."

CONSEQUENCES OF A NARROW CONSTRUCTION OF SOVEREIGN FUNCTIONS LEADING TO INCLUSION OF GOVERNMENTAL ACTIVITIES AS INDUSTRY

18. It is submitted that public employment under the Government is governed by a distinct Constitutional and statutory framework. Recruitment and service conditions of government employees are regulated under Article 309 of the Constitution of India, while Article 311 provides procedural safeguards against arbitrary dismissal, removal or reduction in rank. These provisions create a specialised **regime governing public service which is separate from the industrial labour framework.**

19. In addition to Constitutional safeguards, Parliament has enacted specific legislation such as the Administrative Tribunals Act, 1985, which provides specialised forums for adjudication of service disputes involving government employees. These tribunals ensure that grievances relating to recruitment, service conditions, promotions and disciplinary actions are adjudicated through a structured legal mechanism.

20. Therefore, **exclusion of sovereign functions** from the ambit of industrial dispute legislation does not deprive government employees of legal remedie**s**. Their rights remain protected through Constitutional and other Statutory mechanisms.

21. It is submitted that any departure from the aforesaid leading to consideration of Government departments as industries would be disastrous and would create chaos. This has been observed by this Hon'ble Court in ***Bombay Telephone Canteen Employees' Assn. v. Union of India,*** **(1997) 6 SCC 723** as follows:

"11.
…

> ***If the doctrine laid in Bangalore Water Supply Board case is strictly applied, the consequence is catastrophic and would give a carte blanche power with laissez faire legitimacy which was buried fathoms deep under the lethal blow of Article 14 of the Constitution which assures to every person just, fair and reasonable procedure before terminating the services of an employee. Instead, it gives the management/employer the power to dismiss the employee/workman with one month's notice or pay in lieu thereof, and/or payment of retrenchment compensation under the Act. The security of tenure would be in great jeopardy. The employee would be at the beck and call of the employer, always keeping his order of employment in a grave uncertainty and in a fluid state like Damocles' sword hanging over the neck.*** *On the other hand, if the interpretation of providing efficacious remedy under Article 226 gives protection to the workmen/employee the speedy remedy under Article 226/Section 19 of the Administrative Tribunals Act. They would protect the employee/workman from arbitrary action of the employer subserving the Constitutional scheme and philosophy. The Court would, therefore, strike a balance between the competing rights of the individual and the State/agency or instrumentality and decide the validity of action taken by the management. …*
>
> ***...***
>
> ***13.*** *On an overall view, we hold that the employees working in the statutory canteen, in view of the admission made in the counter-affidavit that they are holding civil posts and are being paid monthly salary and are employees,* ***the necessary conclusion would be that the Tribunal has no jurisdiction to adjudicate the dispute on a reference under Section 10(1) of the Act. On the other hand, the remedy to approach the Constitutional court under Article 226 is available. Equally, the remedy under Section 19 of the Administrative Tribunals Act is available. But, generally, the practice which has grown is to direct the citizen to avail of, in the first instance, the remedy under Article 226 or under Section 19 of the Administrative Tribunals Act and then avail of the right under Article 136 of the Constitution by special leave to this Court etc. Thus, in view of the admission made by the respondents in their counter-affidavit that the workmen of the appellant-Association are holding civil posts and are being paid monthly wages and benefits and are considered to be employees, the jurisdiction of the Industrial Tribunal stands excluded.*** *It is open to the aggrieved party to approach the appropriate authority in accordance with law. In that view, the finding of the Tribunal in the impugned judgment is legal and warrants no interference. It is open to the respondents to avail of such remedy as is available to a regular employee including the right to approach the Central Administrative Tribunal or the High Court or this Court thereafter for redressal of legal injury."*

22. If governmental departments and welfare institutions were treated as *"industries"* under labour legislation, the **consequences would be far-reaching**. Service conditions of government employees could potentially be altered through industrial dispute mechanisms which are fundamentally incompatible with Constitutional service protections. Essential

public services such as **government hospitals, welfare departments, educational institutions** and other statutory bodies could become subject to industrial disputes, **strikes and collective bargaining conflicts**. Such a development would seriously undermine the functioning of institutions which are critical for public welfare and governance.

23. Further, Industrial law mechanisms permitting termination through notice or compensation would also be in conflict with the Constitutional safeguards contained in **Articles 309 and 311.** The **entire framework of service jurisprudence** governing public employment would therefore be destabilised if the Industrial Disputes Act were applied indiscriminately to governmental functions.

24. In this background, the Industrial Relations Code, 2020 **must be understood as a clarificatory and remedial legislation**. By expressly excluding sovereign functions from the definition of "industry", Parliament has addressed the interpretational confusion which had arisen following the ***Bangalore Water Supply & Sewerage Board v. A. Rajappa & Ors*** **(1978) 2 SCC 213** judgment and restored the proper boundary between industrial employment and public service employment.

25. The definition of *"industry"* under the Industrial Relations Code, 2020 therefore reflects a deliberate legislative effort to cure the **mischief created by the expansive interpretation adopted in the *Bangalore Water Supply & Sewerage Board v. A. Rajappa & Ors* (1978) 2 SCC 213.** When interpreted in the context of the Indian Constitutional framework, sovereign functions necessarily include governmental actions undertaken in furtherance of Constitutional mandates, statutory obligations and welfare responsibilities of the State. Such functions fall outside the scope of industrial dispute legislation while remaining subject to Constitutional scrutiny and established service law remedies.